

In the Council Chambers of the Showers City Hall on Wednesday, October 15, 1997 at 7:30 PM with Council President Pizzo presiding over a Regular Session of the Common Council.

COMMON COUNCIL  
REGULAR SESSION  
OCTOBER 15, 1997

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

ROLL CALL

Council President Pizzo gave the Agenda Summation.

AGENDA SUMMATION

The minutes of August 6 and October 1, 1997, with a correction suggested by the clerk, were approved by a voice vote.

APPROVAL OF  
MINUTES

Sherman discussed the recent visit to IU of Mikhail Gorbachev, former Russian leader, and noted what an incredible opportunity it was to be able to hear him speak. He noted that the HT editorial took him to task for not actually being the first person to speak out on environmental or world issues and thought they missed the point that when a major world figure speaks it is important. His tour is also a start for people in this country to begin to lose their own tendency to ethnocentrism.

MESSAGES FROM  
COUNCILMEMBERS

Sabbagh reminded people of the TechConnection 97 tomorrow at the Convention Center, that XJD was honored by the Growth 100 as being one of Indiana's 100 leading high potential growth companies, that the Frank Sothern Ice Rink opens Friday with a brand new roof that was paid for by the Task Force and 15 businesses that have decided to advertised along the rink side boards, and his disappointment that the Showers Parking Lot renovation will increase from \$250,000 to \$358,000 (43.2%) and this is all to a lot that is barely two years old. That has always been his main concern. He went on to itemize the various other things that could be done with the money; sidewalks, drainage, erosion problems. He thought the current location of the market was adequate. He also discussed the payback that will be necessary from the General Fund and that does impact the budget and the council just has not done much to be proactive on this issue.

Service said she too was also somewhat displeased about the overdraft and that the council did not know about it earlier and there are certainly other things to spend the money on, that money has to be spent in a way that is related to this building. It does point out that early on, the market board wanted to be included in parking lot design decisions before the lot was ever built and that was never done and we are paying for that now. She complimented the current administration for recognizing the mistake and attempting to rectify it. She hoped we will learn from this situation and encourage public input rather than having very closed decision making processes. She said the Society of Childrens Book writers is having their annual meeting in Bloomington this Saturday at the First Methodist Church and now might be a time to learn something about writing. She modeled a tee shirt that had Garfield the Cat (from Indiana) as the official mascot of the town of York, England. Art is an export!

Young read some excerpts from the Indianapolis Start regarding different city sewer management systems that will result in a savings of over \$189 billion dollars over the life of a 10 year contract, and will be used to make and improve other various infrastructure needs. Residents are paying no more for sewer service then they did in 1985, for an average rate of \$7.71/month. We can change the way we do things, and the cost savings resulted by controlling utility costs as well as personnel costs and that pay scales and benefits are better than when they worked for the city.

Mayer thanked neighbors and the Police Department for apprehending

people who were stealing street signs in his neighborhood last night and urged people to consider the inconvenience, danger and cost involved when this "prank" is carried out. He also commented on a NY Times article about a recent ordinance passed by the New York City Council regarding different kinds of noise and the very stringent regulations and fines they have put in place for violators. Our own recent ordinance was not an attempt to step on anyone's personal rights, but was trying to be respectful of everyone's needs.

Banach said he was glad to see the HT article on the Farmers Market and he too was not happy about the extra funds that will be spent. He said that every councilmember has talked about prioritizing and tough choices and wondered who made the "tough choice" for the market increase when he was already opposed to it in the first place. In talking with the Controllers Office he determined that over \$700,000 could be saved in interest if the \$250,000 was used to pay back the bond.

Pizzo briefly reported on the recent Leadership Bloomington Trip to Lafayette, IN as a way of sharing information about common problems and programs that have been instituted and it was a very productive two day meeting/visit.

There was no mayoral message.  
There was no public input.

MAYORAL MESSAGE  
PUBLIC INPUT

It was moved and seconded that Resolution 97-16 be introduced and read by title only. Clerk Williams read the resolution by title only.  
It was moved and seconded that Resolution 97-16 be adopted. The Clerk noted that this is a legally advertised public hearing for the confirming resolution as well as the Statutory Waiver Request.

LEGISLATION FOR  
SECOND  
READING/VOTE  
RESOLUTION 97-16

Sabbagh reminded the council of his earlier Conflict of Interest Statement and the council's acceptance and approval of such disclosure.

Randy Lloyd, Mayor's Office, reviewed the abatement that was approved at the last Council meeting, the various meeting schedules and council recess that occurred between the EDC approval and the council meeting schedule, and the delivery of equipment. In 1995 the tax abatement laws and regulations were amended to allow for this particular situation and allow a waiver opportunity to exist.

Pizzo called for public comment and again reminded the council and the public that this is a legally advertised public hearing for this confirming resolution, the ERA designation and the statutory waiver process related to the installation of equipment.

The resolution received a roll call vote of Ayes:8, Nays:1(Service)

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 as well as an October 1, 1997 Council Session that resulted in a 4-4 no action vote.

Pizzo said that this has been heard at least four times and unless there is something drastically different he expected the presentations to be brief.

Tom Micuda, Planning Department, gave a very brief overview of the zoning petition. Issue #1 is the land use questions and staff and Plan

Commission did find this an acceptable land use amendment. Issue #2 is the parking site design and that this particular site design was not called for in the master plan and zoning ordinance. The parking that was approved by the Plan commission is side loaded to the south of the structure, the building is about 40-50 feet closer to the roadway and the first visual effect, from the street, is either the building or the large buffer of trees and thus, the side loaded parking is less evident. The petitioner has requested that parking be allowed in the front of the building and staff and council did not support that changed concept. So if the site plan is changed, the plan will go back before the Plan Commission and seek a final plan amendment. Staff made it clear that it would not support that amendment but was confident that it could eventually be resolved.

Steve Smith, representing the petitioner, said that this petition is not a site plan approval process but an amendment to the zoning map to allow the assisted care units and that this project will create far less impact on the entire area in general.

Young also stated that while he does not have a direct Conflict of Interest, his father did sell the land to the persons who are developing the site.

The ordinance received a roll call vote of Ayes:8, Nays:1 (Service).

It was moved and seconded that Ordinance 97-39 be introduced and read by title only. Clerk Williams read the legislation by title only.

ORDINANCE 97-39

It was moved and seconded that Ordinance 97-39 be adopted. The synopsis was given.

Michael Flory, Legal Department, said this legislation will allow the City and Common Council to enter into public-private agreements if they should so chose. As a Home Rule state, legislative bodies have the power to enact legislation such as this and if it is adopted it will allow us to look into entering into future public-private agreements. The language of this type of legislation is important and it is frequently thought of as privatization legislation, and that is a connotation that brings about a lot of concerns for a lot of people. These are public private agreements and Bloomington already has a good tract record of working with various other entities to accomplish a common goal. There are two types of agreements that fall under this legislation: one is a BOT (a private entity that will build, operate and at some point transfer a facility back to the city) or the agreement can be to simply operate an existing facility. The state legislature created this legislation to address cities' needs to clarify what was becoming a more frequent occurrence and there were too many "gray" areas. The definition section of the ordinance is the most important part of the legislation. He said that in Indianapolis all the golf courses are being operated under private agreements but only the last one came in under this specific enabling legislation. Other examples of this type of legislation are the Indianapolis airport, a skating rink somewhere in Lake County and a wastewater treatment facility.

Certain steps must be followed: published RFPs, with criteria that must be spelled out and the option to advertise must be broadly disseminated not directed to one or two private entities, negotiations with fair and equal dissemination of information, public hearings on the draft, public comment, a public decision process/vote, the agreement falls under five years, the boards action (Parks Board or Board of Public Works) is final and if the agreement is for more than five years then the Common Council would have to vote on the contract, and again, this would be at a public meeting.

Mayer asked why the third Whereas clause, specifically directed to the golf course, was included in what is supposed to be general enabling legislation.

Flory said this allows us to look at any public private agreement and this is mentioned because it is the only potential agreement that we have in mind right now. Mayer said he would feel more comfortable deleting that clause, pass the legislation and then work back to whatever project the city wanted to work on. Flory said the Cascades Golf Course is not attached to this and he said he too thought it should not be included. McNamara said that they had no problem with deleting that clause.

Pierce asked if it would be possible to have a BOT that is less than five years in length. Flory said that hypothetically maybe the park concession stands would have contracts on a less than a five year basis, but the other projects are just too large a structure or investment to be willing to have a shorter contract. Pierce then asked what kind of private operating contracts the city is already engaged in and how was it arrived at without this legislation. Flory said Parks has agreements with concession stands as well as a pro service contract at the golf course to name a few.

Pierce said the type of contract a BOT requires should be a fairly infrequent event and Flory said that there has been no discussion with any group as to what other operating agreements might fall under this. Pierce asked and Flory agreed that if the Council wished to reduce the number of years of a contract from say five, to three, that it would be permissible. Flory thought that the concern would be a council that was reviewing all kinds of small little contracts that have been in place for several years. Pierce asked what the administration thought about lowering the contract time period.

Fernandez said he wasn't sure as he could not think of an example of a construction project that would utilize a BOT that would be less than five years, as the whole point of the BOT is to have the private sector capitalize the project based on the amount of investment required. That will determine the length of the agreement and theoretically there could be a very small project and the investment paid back in less than five years, but it is highly unlikely that we would consider something like that (e.g. for a BOT project). He said that the enabling legislation as it is currently written is more than adequate.

Pierce said the second part of the ordinance deals with 'operations' and that is a pretty broad range of things that doesn't relate to construction but a series of these type of arrangements (2,3, or 4 year agreements) and that is what he was concerned about.

Fernandez said the only interest in doing this is to have some additional tools for some of these projects we want to do. There is no interest in sporing other kinds of privatization interests. Pierce again asked if reducing the number of years was objectionable and Fernandez said not particularly. Pierce was also concerned about the city's right to refuse to disclose proposal contents with eligible offerers and he thought that an RFP could be solicited, reviewed, discussed and then not disclose that the offers even were.

Flory said his concern is private businesses consider these financial disclosures as proprietary information for them and do not necessarily want that information publicly disclosed until it is absolutely necessary. And so if that was deleted and every proposal that came in was public information, it would simply scare off many potential bidders. Pierce said that on a state level RFPs are opened on a certain date and there can be a bidders

conference in advance, and then the information is made public at that point. Flory said it works that way at the city level via the Board of Public Works and he was not sure what the impetus was in drafting this legislation in this specific way. Pierce again said he wants the use of this legislation to be a very unusual and infrequent thing and he was concerned about opening the door to a whole bunch of things and to change the procedure from what we are used to.

Cole said that the two examples given for this project were in fact done without this enabling legislation, e.g. the golf pro shop. It may be a good thing but the timing is off. When we talked about the golf course we heard that this was 'the people's course', affordable, accessible, run by and owned by the City of Bloomington. She was not in favor of the BOT process for the golf course. Another off timing point is the recent newspaper coverage for the Farmers Market project that is going to be \$358,000 not \$250,000. On one hand we can't afford to do these other things (golf course) and yet there is a limitless amount of money for the Farmers Market project. She supported the market and its needs but for the money and space, but this particular expenditure is just a tremendous investment for what we expect the return to be. She thought we should consider using the monies for reducing the bond payment on the Showers facility/loan. She said she did not like the market design that is planned for the Mayflower lot and the addition of yet another focal point in this area is not the right direction. She said she hoped that the market was very successful and that she is very wrong about the project, but her underlying concern is that we have money to do certain things and then other projects have to be financed with legislation such as this.

Sherman asked what other types of contracts might fall under this legislation e.g. leaf pickups. Flory said those are more like services provided and said the idea is to build, operate and then transfer a public facility. Sherman said that operation, management and maintenance are currently included in the ordinance and he wants the language clarified so that we know what we are getting into and what the scope of this ordinance encompasses or 'what' we are going to put under it.

Flory said that after the proposals come in, they might in fact, be rejected. This legislation does not force us to enter into any agreement of any kind.

Sabbagh asked if all agreements for over five years would come to the council and Flory said yes or three years or one year if the council likes. Sabbagh said he did not see any problems with this legislation.

Service moved and it was seconded that Amendment #1 be considered: that Section IX be amended to include "and notice of change in policy" to the title of that section as well as language pertaining to changed fees, programs, times and days of operation, environmental impacts or major physical alterations, with written notice to the board so that the matter can become one of public agenda and discussion.

Service said that the concept of privatization leaves her uneasy and the bottom line motivation of the public sector is supposed to be the public good and the motivation of the private sector is profit. While balance is possible public scrutiny has to be essentially part of the process. Different mayors, councils and department heads may view this differently and that is why the parameters must be established now. The public needs to be informed and involved and if a business does not want that scrutiny, then they should probably not be operating a public service.

Banach thanked Service for the amendment and her willingness to listen.

Young thought it was a little vague in some areas, that sometimes fees go down rather than up and what if some of the changes or impacts are positive. This has no teeth that makes anyone comply with anything. There is no approval or denial but just a public hearing.

Pizzo said the Indianapolis golf courses have been privatized for years and the fees/charges process are addressed in the contract.

Service said that the contracts that are currently in place are discussed, in public, by the Parks Board and the idea is to keep the same level of public input before the policy is established and how willing the vendor is to consider these public concerns is an important aspect to all of this.

Young asked how the amendment would improve the agreements or contracts and Flory said that it would be irresponsible to write a contract without addressing such concerns.

Sherman agreed with the amendment and asked if this would cover changes that went beyond the agreed upon BOT and Service said that was covered in the amendment if they are already provided for in the agreement.

Young thought this was micro management of something we don't even have in front of us.

Amendment #1 received roll call vote of Ayes:7, Nays: 2 (Young, Sabbagh).

Mayer moved and it was seconded that the third Whereas be struck from the ordinance. This amendment was not in writing and was actually voted on once and then a written text was given to Council President Pizzo and a second roll call vote was taken.

The amendment received a roll call vote of Ayes: 9, Nays:0.

Pierce moved and it was seconded that Amendment #3 to substitute the number one year where ever five years appears in the ordinance. He said he wasn't concerned about the one year hot dog stands but this is a good failsafe measure and if it is too cumbersome we can go back and extend it.

Young had the same problems with this amendment as he had with the first one and wondered why a year. Pierce said that there are contracts that don't require council concern and those that are longer might be of enough importance that the council would have the chance to see if they like the direction things are going. Pierce said these provisions would only apply to what is under the provisions of this chapter and this one year would only apply to things that are happening under this enabling legislation. This is really very narrow.

James McNamara, Deputy Mayor, said that the focus has been on the Build, Trade and not the Operate and pure operating agreements have not had the attention they might need for discussion purposes but it seems clear that this legislation refers to 'operation of facilities' and so it would not apply to leaf collection. Questions then surfaced regarding concessions stands at the golf course and he just didn't know how this applied to an operating basis. He said he did not think this applied to a whole new set of operating agreements and did not know if this applied to the pro shop at the golf course, or not. He said that he thought the council was looking at three

years rather than one year and that the administration did not think it was necessary to go to the mats on this and that was their position at this point in time.

Sherman thought we should start small.

Amendment #3 received a roll call vote of Ayes:6, Nays:3 (Pizzo, Sabbagh, Young).

Mayer then restated his desire to have the council consider the above mentioned Amendment #4. The second vote was taken and it noted above. Mayer apologized for the *grave* error he committed and said it would never happen again.

Amendment #4 received a roll call vote of Ayes: 7, Nays:1 (Banach). Young was out of chamber.

Pizzo suggested that we have hit our limit for amendments and welcomed public comment, without amendments.

Mike Bauer, Street Department, was also concerned about the privatization word, that not a single union labor job was eliminated in Indianapolis when they started running their programs and he was confident that our mayor and this administration would be fair and address the concerns we are concerned about and he is willing to let the people who do the job every day make recommendations and suggest changes when and where the job can be done better.

Service said that she does feel better about the ordinance with the changes that have been made, but that she would not support the ordinance. The real reason this is happening is for the Cascades Golf Course and she did not support the golf course expansion because of the existing Cascades park and woods.

Cole said this is a matter of accountability, not a lack of trust.

The ordinance, as amended, received a roll call of Ayes:7, Nays:2 (Service, Cole).

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

Ordinance 97-16 To Amend Title 20 of the BMC Entitled City of Bloomington Zoning Ordinance (Revising Section 20.06.05.03 Entitled "Siltation & Erosion" and Providing Related Definitions.

Ordinance 97-35 To Amend the Bloomington Zoning Maps from RE 3.5/PRO 6 to PUD and Approve the Preliminary Plan - re: 3209 East Moores Pike (American Storage LLC, Petitioner)

Ordinance 97-40 To Amend the Bloomington Zoning Maps from MG/PUD to BA/PUD - re: 3000 West Third Street (Jerry Gates, Petitioner)

James McNamara, Deputy Mayor and ordinary citizen, said he was concerned with the frequency that council is considering amendments to legislation that are drafted the night they are introduced and voted on. He urged the council to follow their own rules for written amendments, in advance and said that these on the fly amendments are problematic for everyone.

LEGISLATION FOR  
FIRST READING  
ORDINANCE 97-16  
ORDINANCE 97-35  
ORDINANCE 97-40

PUBLIC INPUT

Sherman said the point is well taken, but we do this very seldom. He thought the council erred when they skipped the committee of the whole meeting.

While this is topical, Pat Williams, said that possibly due to speaker locations in the Chambers, not one word of Mayer's amendment was audible at the staff table and in fact thought it was Amendment #3 (third) was the only phrase that was heard and thus what you were voting on. Tonight's meeting and the confusion was a combination of a lot of things but basically the amendment was not expected, it was not written and more importantly it was not heard.

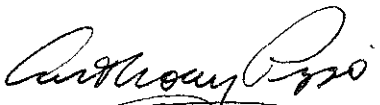
Sabbagh reminded everyone that this Saturday Jason Banach will be married and he wished him the best of luck and happiness.


The meeting was adjourned at 9:50 PM

ADJOURNMENT

APPROVE:

ATTEST:

  
Anthony Pizzo, President  
Bloomington Common Council

  
Patricia Williams, CLERK  
City of Bloomington