

In the Council Chambers of the Showers City Hall at a meeting held on Wednesday, November 5, 1997 at 7:30 PM with Council President Pizzo presiding over a Regular Session of the Common Council.

COMMON COUNCIL  
REGULAR SESSION  
NOVEMBER 5, 1997

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

ROLL CALL

Council President Pizzo gave the Agenda Summation.

AGENDA SUMMATION

The minutes for October 15, 1997 were approved by a voice vote.

APPROVAL OF MINUTES

Banach apologized for missing the meeting last week. He was on his honeymoon and expressed his sincerest disappointment at missing the longest council meeting in history (last weeks meeting) and he was back, informed and ready to go.

MESSAGES FROM  
COUNCILMEMBERS

Mayer congratulated and welcomed Banach back, thanked Marie Webster retiring President of the Green Acres Neighborhood Association and recognized her for her hard work and endless hours devoted to any given issue that concerned their neighborhood.

Cole extended birthday greetings to the mayor as well as her son, Ethan, who lives in New York.

Service gave the theater report and invited the public to the upcoming Cyrano de Bergerac performance at the Black box Theater.

Cole informed the council and the public about the new Prospect Hill Historic District brochure that is now available.

MESSAGES FROM  
COUNCIL COMMITTEES

It was moved and seconded that Ordinance 97-40 be introduced and read by title only. Clerk Williams read the legislation by title only.

It was moved and seconded that Ordinance 97-40 be adopted. The synopsis and committee recommendation of Do-Pass 6-1 was given.

LEGISLATION FOR  
SECOND READING/VOTE  
ORDINANCE 97-40

Tom Micuda, Planning Department, said this ordinance is essentially a housekeeping change that requires council approval. As this project went forward in 1995, the N/S roadway was the dividing line between commercial and general manufacturing. As all the details were worked out the road shifted westward and that shift was enough to create a problem for two small parcels that got cut off. While the road shifted to the west the zoning designations did not and this rezone is needed to address that point. No use changes or conditions of approval have occurred with this rezone request.

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

It was moved and seconded that Ordinance 97-35 be introduced and read by title only. Clerk Williams read the legislation by title only.

It was moved and seconded that Ordinance 97-35 be adopted. The synopsis and committee recommendation of Do-Pass 2-2-3 was given.

ORDINANCE 97-35

Lynne Friedmeyer, Planning Department, outlined this petition for a PUD on 2.22 ac of land for mini warehouses or self storage units. This site plan is for 54,000 sqft of storage space with a program design that will control drainage concerns with detention ponds, and vegetative swales that exceed current code requirements. She described the block, brick, shingled roof, dormers on the front, staggered walls and roof peaks, landscaping and tree preservation with 12' to 15' evergreens. The signage would also be limited to 16 sqft per side with a ground level sign and lighting from ground level. Sidewalks connections were discussed and the Kerasotes plan in 1993 required sidewalks all the way to the

east property line and are currently in place. Traffic counts from 1996 are 4700 and that is not close to the capacity that this road can carry. Those numbers are prior to the development of the Rogers Farm that is currently under development. This use would be a much lower traffic generator.

Don Hastings, Planning Director, addressed Growth Policy Plan (GPP) implications, and said that easternmost area was designated for low density residential for a maximum of 5-6 units/acre, moving west are densities of 7-12 units/acre and said that during discussions of density during the Rogers Farm, development areas were shifted further west as to take advantage of more infrastructure that was in place to handle those densities. Conditions have changed and now staff recommends that this use is consistent with our GPP as it has evolved. Once the densities were shifted closer to the Kerasotes area then we ended up with higher densities on the western end of the tract than the GPP had seen. So we end up with this tract with commercial to the west and residential of 25 unit/acre and 12.5 units/acre to the north and east. Given this context these are changed conditions that warrant or justify this amendment for this tract and with all the changes that have been made makes it supportable. As far as precedents, the land uses along Moores Pike are already spoken for and this non residential use is not going to creep down the corridor and so it is not an issue.

Cole asked about a dark green area that has been identified as a possible park. Friedmeyer said there is a large conservancy area where there is a creek, watering pond and large trees. It is owned by The Fields developer and it is not a public area or open to the general public. Cole said that the density in this entire general area is very intense and that the area we are talking about tonight could be a natural green space area.

Sabbagh asked for more information about the traffic counts. Friedmeyer reiterated the above information and said that the actual capacity for a secondary two lane arterial road is 9100. Prior to the farm development we were half way there. Sabbagh asked about a more current traffic count and Friedmeyer said that one will be done on Monday.

Pierce thought we should have had the traffic counts before we voted on this petition this evening. Hastings talked about all the many sites that need to be updated (counted), that there is a program in place, but that it's often difficult to get a counter out, and that a count will be done on Monday. For the purposes of this petition, staff does not feel that there is a traffic congestion issue here.

Mayer asked about designations, that with all the density and development to the east beginning with Gentry Estates, we are still depending on a secondary two lane arterial road. Hastings then discussed several of the various designations and thresholds and congestions numbers that pertain to road designations. Mayer again said that this road is now in an urbanized area and that the use has already changed. He also asked when and how this road would change from county to city jurisdiction and Hastings said he was not sure how that change takes place, probably annexation. Mayer thought we were pretty much there with all the annexations that have taken place in that area and this road will become a city road.

Pizzo asked that people wishing to speak limit their remarks to five minutes.

Mike Carmin, representing the petitioner, responded to some of the concerns and questions that have been raised. The issue of setting a precedent: this is not a court of law and there is no precedential value to council decisions unless they wish that to happen. He did not believe that would happen with this tract as the development plans are already in place. Traffic counts: this petition will generate a smaller fraction of what the current underlying zoning allows. That

this is an abuse of the 3 acre minimum PUD zoning provision: the old ordinance had a 5 ac minimum for PUD and at one time the discussion centered around 1 ac PUD with NO exceptions and the 3 ac minimum was a compromise and that it was not a mandate if specific conditions apply. He talked at length about the owner of the tract and how the particular hardships created by surrounding development has impacted Mrs. Grubbs quality of life. It just isn't feasible that these hardships will be acceptable for other residential users if the current zoning remains in place. This is a remnant of land and as development as occurred around this tract, it has become an infill project and now this is the only tract left. He said that the GPP contains as many statements that support this development concept as there are points directed against it.

Jeff Fanyo, also representing the petitioner, discussed the design process. He said the entire plan was designed to minimize the impact on the area. He showed aerial photos of the tract and surrounding areas, and discussed the various adjacent zoning designations, uses, noise abuses, truck traffic and delivery noise. The building shields the site from Moores Pk traffic and is architecturally pleasing with split block, staggered roof lines, gables, striping the perimeter of the building, evergreens and mature site trees. As far as trip generation statistics he said that storage units generate approximately 56.2 trips/day, up to 134/day for single family residences and 81/day for apartments.

Carmin said that the Monroe County Highway Dept said that the speed limit on Moores Pike will be reduced from 40 mph to 30 mph after a County Traffic Commission approval.

Mrs. Grubb addressed the council and said how difficult it has been to have all this development around her, with all the lights and noise that comes with that. She thought this would be suitable for her neighbors across the street in Bittner Woods who she cannot even see from her property. She urged the council to consider her situation.

Joanna Bruce, Mrs. Grubbs daughter, talked about how we all have to understand and accept change, that the tract is not suitable for a SF dwelling, that there are real safety concerns about collecting mail on Moores Pike, trespassing and points that have been raised before.

Gerald Marker, Bittner Woods resident, empathized with Mrs. Grubb, and said commented on the great increase of traffic on Moores Pike. Earlier council decisions have contributed to this problem and there are streets to the north that could be opened up and relieve some of the pressure and he urged the council to deny the request.

Ted Jones, Bittner Woods resident, was concerned about the proliferation of commercial development on residential areas and this is a perfect example of this. He also commented on the type of vehicles that use warehouses and they are certainly different than residential vehicle use.

Dennis Simtruk, also a Bittner Woods resident, also spoke against the petition and thought the council should be doing some planning when the people who are doing the development are not. The traffic generated by this development will be considerably more dangerous (trucks being driven by inexperienced persons, etc) and elderly people who will be living in this area will be affected by this particular use.

Karen Hansen, a Bittner Woods resident, said that there have been numerous attempts to modify the impacts of this proposal, that this isn't really a precedent setting decision, that it is now considered a remnant parcel of land, reduced speed limits that are still actually faster than a person walking can handle, and that there isn't anything else to do but to approve this, and lastly, this will

generate lower traffic trip generators than any other use. She urged denial of the petition.

Tom Thornton also spoke against the petition saying that the people who bought property in that area depended on the integrity of what the land was actually zoned and now the plan of over 400 mini warehouses is not compatible with residential housing. The current traffic is residential traffic and 400 warehouses will draw a different type of traffic and should not be mixed with residential. He pointed out that every address along Moores Pike is residential NOT commercial.

John Ingall said that if so many people are concerned about this land use, that they should purchase the property from Mrs. Grubb. He said that many moving vans and trucks will also be used with so many multifamily buildings.

Pierce said the GPP clearly says that there will be no more commercial development on the east side of town, that it should be residential. The whole zoning issue started with creeping commercial development. The staff used the phrase 'the GPP has evolved'. The plan has not evolved, it is exactly the same as when it was written and passed. The plan has not changed, it's the staff's interpretation of the plan that has changed and he did not think it was appropriate to change it until we have gone through the Review Process as called for in the GPP. The council has to follow some kind of criteria and that is what the GPP and zoning ordinance does. He outlined the points that this petition raises: PUD definitions are not met and he said that this commercial development will cover more green space than the underlying zoning will allow, the tract is less than 3 acres and does not offer any mitigating reasons why the 3 acres should be waived. Decisions must be based on sound criteria, that this is a project that is not consistent with the GPP, and there is no unique aspect to this particular petition consistent with a request for a waiver.

Service said that her support of this petition is based on a lower impact use for this tract of land. She disputed the use of large vans and trucks as being a deterrent and again, thought this would be a lower traffic generator.

Sabbagh asked if there was anything to preclude another entrance/exit to this complex. Fanyo said when the plats were approved for earlier development there was no access from the north property lines and they have not been able to achieve it at this time. Sabbagh thought they should try real hard to try to make it happen and he would just feel better about it. The barricades up on Covenanter are wrong, the situation has changed and traffic on Moores Pk has greatly increased because there isn't a second in/out to accommodate the development over there.

Hastings said the Covenanter barricades are in place because of concerns expressed at the time of the Rogers Farm development and all the traffic that would move west from that new development east of the Covenanter area. Until Clarizz is extended to Third Street, the Rogers Farm traffic would not be allowed to use Covenanter Drive to cut through. Moores Pk residents have borne the brunt of all the traffic in that area. Hastings said that emergency and fire vehicles have full access even with the barricades that are currently in place.

Banach thanked everyone who came out tonight with clear well thought out comments and tried to explain the process as it involves the council and the decisions they must make based on what petitioners bring before them, not necessarily what they would like to see there.

Cole opposed the plan and said that we as a council made a commitment to the citizens of this community to hold the line on commercial growth in the SE

quadrant of the city. Good points have been raised and she expressed particular concern about the large amount of ground coverage as very distressing. Maybe the old trees will live, but all of the asphalt will be a problem. People counted on the GPP and the zoning ordinance. Sometimes things can go one way or another, but in this case, the tipping decisions should not be whether or not someone can make a great deal of money; however it's the people who live there who should be considered.

Mayer talked about the planning process and the inexact nature of the process, and the various people involved in the planning process see this objectively as well as subjectively. Many of the people involved in this evening's discussion were also involved in the GPP discussions of several years ago. And while MF housing moved west from original plans, it did not change the nature of the GPP toward that piece of land and does not support the rezoning of this tract of land. He said that while he would not support this petition he commended the petitioners for their efforts to bring forward a plan to try and fit this piece of land.

Young, as a Moores Pk resident, supports the petition and said that the use change will improve the road and traffic conditions, and there will be less of an impact there than the look of it, and is a better use than the underlying MF zoning.

Banach respectfully disagreed with earlier comments by Cole regarding approving the first thing that comes before us and he thought the council in the past has approved other things like a tax abatement on N. Morton St.

Pizzo thanked everyone for their calls, letters and comments.

The ordinance received a roll call vote of Ayes:4, (Banach, Young, Service, Sabbagh), Nays:4 (Mayer, Cole, Pizzo, Pierce). The motion failed for lack of a majority and the vote reflects a No Action vote.

It was moved and seconded that the council reconsider the vote on Ordinance 97-35 at a date to be announced at our next regular session. (two weeks from tonight - December 3, 1997).

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

It was moved and seconded that Ordinance 97-16 be introduced and read by title only. Clerk Williams read the legislation by title only.

ORDINANCE 97-16

It was moved and seconded that Ordinance 97-16 be adopted. The synopsis and committee recommendation of Do-Pass 7-0-0 was given. Williams noted that there are two amendments and one correction for consideration.

Tom Micuda, Planning Department, said that many of the long time positions of the Planning Department and planning process have been reactive in nature to various concerns or complaints and the department functioned pretty much as a regulatory department. This is an attempt to be more proactive, rather than always meeting or interacting when there is a violation. There is now, a greater acceptance that erosion control is an environmental issue. This ordinance is coming forward because earlier versions of the ordinance simply were not the most workable, enforceable and efficient. He discussed earlier time-mandates in the context of work schedules that larger tracts require and how so often it just didn't work in a reasonable and logical manner. A cooperative approach is how they would like to proceed in the future.

Mary Ellen Gray, Environmental Planner, reviewed the current planning department procedures and how this new ordinance improves some of these processes and procedures and by moving away from perimeter control to actual

site management measures we can implement and use newer technologies that are now available. Ongoing education of staff is critical as new products are developed as well as construction management techniques, and seminars for everyone involved in the process. The emphasis is on pro-active planning and performance standards. The two main changes are the pro-active planning and improved enforcement tools; design review control plans before the site is started, construction schedules and sequences, pre-construction conferences, the stop work order is still included but is not the only tool, the creation of a violations schedule in the ordinance, notices of violation, and ticketing systems.

Micuda said that there is a small correction addressing a typographical error in the last sentence of Part K (1)(a) of Section 12.

Young said he recently asked a developer about the cost of installing the present system of erosion control measures in a subdivision and a home, and it was about \$1,000 per home and he said he asked if cost has been considered by the Environmental Commissioners. Who is supposed to consider the cost? A lot of money is spent on this process and if 300 or 400 homes are built per year this is a lot of money.

Micuda said that the cost of regulations are considered and that is why this is trying to implement different measures than just silt fences, or just seeding.

Don Hastings said while we don't undertake comprehensive cost analysis, we do try to look at what is the most efficient way of reaching our planning objectives using standard techniques within the industry and we can be sensitive to what we add or don't add to the list of requirements.

Young also asked about affordable housing and if there will be any differentiation between \$70,000 homes and \$140,000 homes and how could it be done.

Hastings said this ordinance does not change the degree to which we are requiring erosion control actions. It changes the process, enforcement and compliance. If it can be shown that this ordinance is effecting the cost of affordable housing, then that will have to be addressed at that time.

It was moved and seconded that the corrections noted above be considered. The motion received a roll call vote of Ayes:8, Nays:0.

It was moved and seconded that Amendment #1 be considered. This amendment in Section 6 substitutes language dealing with ground covering measures to be in place within 30 days as well as placement of soil storage piles location, and the length of time that they are in place.

Service said the Environmental Commission urged this amendment as a method of improving the ordinance's compliance efforts to prevent erosion in the first place. Enforcement has been a big part of the problem all along and this amendment essentially enhances the various new proposals that seem to deal with pre-conferences and pre-planning measures.

Robert Shaw offered some preliminary cost estimates of about \$500-100 per home. The time limits must be job specific, weather can be a factor, construction entrances must be placed, site clearing if applicable, top soil striping that is accessible, rough grading, soil moisture content and finally utilities installation, final grading and stabilization of the area. Part 2 of this amendment is just not realistic in terms of soil site location and time schedules. He said the above comments are also directed to Amendment #2 which will be discussed later this evening.

Ben Beard, Monroe County Building Association, urged passage of the ordinance without amendments. He said he preferred the original message/text of the ordinance with all the factors that have been put in place and not simply using the "big stick" approach. He too talked about grading, excavating schedules and why the amendments are not workable.

Tom Fuller, also from the Building Association, spoke against the amendment, repeating the various schedule and timing comments made earlier and he really objected to the 30 day provisions and said that in no other state manuals is this requirement called for.

John England, Prairie Group, Inc., thought the entire cooperative planning process has gone very well and this amendment and he talked about the cost of site development and erosion control for a recent development he completed was over \$100,000. He urged the council to deny the amendments.

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

It was moved and seconded that Amendment #2 which would require slopes over 18% to be appropriately treated with erosion control measures within 14 days whether or not at final grade or with utilities installed.

Service said this cover much the same issues with the added emphasis of steep slopes. The problem is the finishing process can be a very protracted process. On flat ground that may not be a problem, but steep slopes, heavy rain, and 18% slopes is critical. This states that this must be addressed in the planning process.

Tom Fuller shared a letter from Marc Lame of the Environmental Commission said that the steep slope treatment was agreed to early in planning meetings for this new ordinance and the word "immediately" was added and agreed upon by the Plan Commission (the current ordinance).

Ben Beard again said the issue of steep slopes will be covered in the pre-planning process and the amendment is not necessary. If the slope is being worked and the 14 days may need to be extended, then the seeding and mulching process is inappropriate.

Jill Squires, also of the Building Association, said that the ordinance has the support of the association and they are in agreement and that is more positive than what this amendment is about.

Service said that Marc Lame's letter was predicated on the rest of the proposal that came out of the task force. When that was altered before the ordinance went to the Plan Commission, some member of the EC felt that the ordinance no longer was protective enough for the steep slopes. The letter is not a contradiction, it simply applied to a time prior to the Plan Commission vote.

Amendment #2 received a roll call vote of Ayes:3 (Mayer, Service, Pierce), Nays:5.

Young again reiterated that the homeowner is still the one who is paying for this. He referenced an earlier meeting when Ken Demlow, a Plan Commissioner, was disturbed that these amendment were coming before the council and were not heard at Plan Commission. Young thought, in the interest of fairness to the public, that these amendment could not have been discussed at that time. The Environmental Commission appears to have short stopped the Plan Commission to bring this to the council and he did not think that was right.

Mayer pointed out that any amendments would have gone back to the Plan

Commssion.

Cole thanked the Environmental Commission, Pam Service and Kevin Komisarcik for all their import. She said she was pleased that the builders felt involved in this process and were committed to making it work. A review within a year is also a good built in provision.

Service said that the Environmental Commission did present several amendments to the Plan Commssion which covered some of the same ground and they then decided to zero in on bringing the amendments to the council.

Pierce said that originally when it appeared that we had taken out specific dates, he was concerned and after talking with both Plan and Environmental Commissioners it seemed that this is based on two premises; one, that nothing will ever move or leave a site and two, we are talking about designing a plan on paper that requires that we also get out and see if the sites are in compliance. While cooperation is a good thing, there are some people in the community where a "big stick" is needed and he did not think we should be afraid to use it if necessary.

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

Young left the meeting at 10:45PM.

It was moved and seconded that Resolution 97-27 be introduced and read by title only. Clerk Williams read the legislation by title only.

RESOLUTION 97-27

It was moved and seconded that Resolution 97-27 be adopted. The synopsis was given.

Pizzo read the resolution in its entirety.

Service said that landmines are among the most inhumane aspects of war, killing innocent people long after the conflict has been resolved. Countries are crippled for years as a result of landmines and we have a moral obligation, as a country that manufactures land mines to halt this process.

The following persons spoke in support of the resolution;

Richard Katz, a military reservist, urged the ban of landmines world wide.

Victor Harnnack said that after WW I chemical warfare and chemical poisoning was banned and it is time that landmines be considered the same way.

Aase Loescher also expressed concern about the devastation this weapon has left behind after a combat time has ended. Ninety eight countries have supported this proposed ban and we are hoping that President Clinton will also sign it.

Faye Blackburn also urged the council to approve this resolution and information and petitions have been circulating in churches throughout the community to ban these terrible weapons.

Marvin Miller told of the horror landmines created during the Vietnam war as well as in Laos. He lived in the far east at the time and the results of the use of landmines was intensely graphic for him and his family.

Judy Farnsworth said she hoped our government would sign the ban and thought the military complex could come up with other technology to defend borders and demilitarized zones.

Mayer thanked Pizzo and everyone who spoke tonight in support of the resolution.

Cole also thanked Pizzo and everyone who stayed to speak to this resolution. This is the time to take action and try to make a difference.



Pizzo said he has been critized before for bringing up issues that are not local issues. He said we are representatives of this city and we do try to take positions on issues that are important for our citizens. He talked about see landmine victims he has seen in SA and the sheer horror of it all.

The resolution received a roll call vote of Ayes:6, Nays:0, Present:1 (Sabbagh).

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

LEGISLATION FOR  
FIRST READING  
ORDINANCE 97-41  
ORDINANCE 97-43  
ORDINANCE 97-46  
ORDINANCE 97-48  
ORDINANCE 97-49  
ORDINANCE 97-50  
ORDINANCE 97-51

Ordinance 97-41 An Ordinance Concerning the Annexation of Adjacent and Contiguous Territory (Gates/Whitehall Crossing)

Ordinance 97-43 An Ordinance Concerning the Annexation of Adjacent and Contiguous Territory (BioPharm Area)

Ordinance 97-46 An Ordinance Concerning the Annexation of Adjacent and Contiguous Territory (Gentry Honours, Phase One)

Ordinance 97-48 An Ordinance Concerning the Annexation of Adjacent and Contiguous Territory (Kerasotes West)

Ordinance 97-49 An Ordinance Concerning the Annexation of Adjacent and Contiguous Territory (Rhorer Road West)

Ordinance 97-50 An Ordinance Concerning the Annexation of Adjacent and Contiguous Territory (Rhorer Road East).

Ordinance 97-51 To Amend title 15 of the BMC Entitled "Vehicles and Traffic" (Stop, Yield and Signalized Intersections; School/Park and Playground Speed Zones, Destination Truck Routes and Parking Regulations.

Richard Katz complimented the city on the beautiful care and concern that this building is receiving. Katz was the Project Supervisor when the Showers City Hall Project was under construction.. Mayer suggested that Katz extend his comments to Tim Ball as the person who really keeps this building going.

PUBLIC INPUT


The meeting was adjourned at 11:10 PM

ADJOURNMENT

APPROVE;

  
Timothy Mayer, President  
Bloomington Common Council

ATTEST:

  
Patricia Williams, CLERK  
City of Bloomington