

In the Council Chambers of the Showers City Hall at a meeting held on Wednesday, November 19, 1997 at 7:30 PM with Council President Pizzo presiding over a Regular Session of the Common Council.

COMMON COUNCIL  
REGULAR SESSION  
NOVEMBER 19, 1997

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

ROLL CALL

Council President Pizzo gave the agenda summation

AGENDA SUMMATION

There were no minutes for approval.

MINUTES

Sherman expressed some doubts about the leaf collection pilot program saying that as a member of that particular committee, he has had a lot of telephone calls and letters from people who are not happy with the plastic bagging system. This was a two area trial process, no final decisions have been made and he urged people to continue to forward their comments. He also said that as a supporter of traffic calming devices in general, he would not drive over the humps on First Street again. He said that he had doubts about a system that will not allow a vehicle to travel at the legally posted speed.

MESSAGES FROM  
COUNCILMEMBERS

Sabbagh gave a 5th District Report congratulating Bob Armove for a university-wide teaching award, Toby Strout and Gayle Cook who were both named Paul Harris fellows, and Suzannah Wilson newly appointed Plan Commissioner. He also commented on the "speed humps" referring to a recent HT letter criticizing them and suggesting that when one street is "calmed", other streets are then impacted. He also wondered if they caused particular danger to police and fire vehicles.

Service announced the INPIRG's Awareness Vigil for Homelessness taking place tonight in Dunn Meadow, the HT article about Bloomington being the fastest growing small town in the state and suggested that the no-growth moniker often raised is totally off base, that we have a good growth rate and what we need now is balance.

Young welcomed Boy Scout Troop 110 from Ellettsville. The troop is working on their Citizenship Badge.

Banach also welcomed the scouts and said that he also thought the speed bumps on First Street were ridiculous. He said that at a recent seminar on Economic Development the statement was made that there has been 40% less building in Monroe County this year and he wondered how the HT statistic was arrived at. He also served on the leaf collection committee and that once again a detailed review of the program must take place; there may be problems with the bags, but the vacuuming program is very expensive. It has been suggested that a one day burning of leaves might be considered. He also commented on the \$350,000 being spent on the Farmers Market and his biggest pet peeve is all the sand we use on the roads rather than salt which solves the problems of snow and ice and does not leave something that has to then be cleaned up.

Pizzo also drove First Street and found the traffic devices to actually be very calming. He also invited people to the annual Light up a Tree ceremony the Friday after Thanksgiving on the downtown square.

Deputy Mayor McNamara said that Bloomington and Monroe County has recently won the IACT/IAC collaborative award for our GIS system and Scott Dompke described the GIS joint program.

MAYORAL MESSAGES

Cynthia Brubaker, Chair of the Historic Preservation Commission, introduced Bill Hansen, a representative of the Prospect Hill Neighborhood Association, to talk about the results of a recent committee project of defining design

MESSAGES FROM  
COUNCIL COMMITTEES

guidelines that would be used for work done within the district. He said that the committee's charge was to retain the original characteristics and flavor of the district and this was done, not by the Historic Commission, but by people who live in the actual historic district. A booklet is available detailing the guidelines.

It was moved and seconded that Ordinance 97-35 be considered on December 17, 1997.

LEGISLATION FOR  
SECOND READING/VOTE  
ORDINANCE 97-35

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

It was moved and seconded that Resolution 97-29 be introduced and read by title only. Clerk Williams read the legislation by title only.

RESOLUTION 97-29

It was moved and seconded that Resolution 97-29 be adopted. The synopsis was given.

McNamara said this is the annual resolution that allows the expenditure of vending machines monies on the employee holiday party.

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

It was moved and seconded that Resolution 97-30 be introduced and read by title only. Clerk Williams read the legislation by title only.

RESOLUTION 97-30

It was moved and seconded that Resolution 97-30 be adopted. The synopsis was given.

Jeff Underwood, Controller, said this resolution is required to allow Fire Chief Saunders to participate in the PERF pension plan and basically adds this position to the regular employee list of positions and the need to include her in the cities' pension program. A delicate discussion of the Chief's age ensued as to her lack of eligibility in the Fire Pension Plan.

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

It was moved and seconded that Ordinance 97-51 be introduced and read by title only by the clerk. Clerk Williams read the legislation by title only.

ORDINANCE 97-51

It was moved and seconded that Ordinance 97-51 be adopted. The synopsis and committee recommendation of Do-Pass 6-1-1 was given.

McNamara said that the administration has requested final action on this ordinance be postponed until the December 17th meeting. Some parking concerns around the Monroe County Library have come up and they would like to have more time to consider those concerns.

It was moved and seconded that Ordinance 97-51 be postponed until December 17, 1997.

The motion received a roll call vote of Ayes:6, Nays:0. Sabbagh and Young were not in chambers for the vote.

It was determined that the annexation ordinance and companion resolution would be discussed and voted on as a unit unless there was an amendment or change in one or either documents.

It was moved and seconded that Ordinance 97-41 and Resolution 97-17 be introduced and read by title only by the Clerk. Clerk Williams read the legislation by title only.

ORDINANCE 97-41  
RESOLUTION 97-17

It was moved and seconded that Ordinance 97-41 and Resolution 97-17 be adopted. The synopsis and committee recommendations of Do-Pass 8-0 were

given.

Lara Mears presented a brief overview and synopsis of the proposed annexation of the proposed 79.44 acres tract. There will be 7.9 miles of new road planned for the PUD.

Sabbagh said that this annexation is contingent upon approval of the Westside agreement, the area being TIFed, and all those revenues from the improvements are captured by the TIF. He wondered if it is conceivable that if other taxing jurisdictions are not getting their share of the TIF money that they would have to raise their rates. Underwood said a lot of things affect tax rates and he explained once again how the TIF worked. Sabbagh said he had trouble separating this annexation from the others that are being proposed and he said he has been told by some that this is not contiguous. Underwood said that the west side in lieu of annexation agreement is the track we have been moving down and trying to get that approval with the current agreement or another agreement.

Young asked what would happen if we decided to annex neighbors around the west side area and be able to give them the same breaks we give everyone else.

Underwood said if we do not get agreement from the industries within the 60 days time period, this annexation will not be in effect.

It was moved and seconded that Amendment #1 be considered: that would require the parties to execute the changes in the agreement before the 60 day remonstrance period expires and as a matter of course, the council would need to approve any changes in the agreement within that period of time.

It was moved and seconded that Amendment #2 be considered: that would effect the new effective day of annexation if Amendment #1 was passed.

Amendment #1 received a roll call vote of Ayes:8, Nays:0

Amendment #2 received a roll call vote of Ayes:8, Nays:0

Sabbagh said that he would not support this legislation because of the many philosophical problems that he has with TIFs in general.

Cole said that the total tax levy might have to rise in order to do street and road improvements in areas that did not have TIFs in place to finance those needs. This is a way to capture that money and make those improvements in that area.

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

It was moved and seconded that Ordinance 97-43 and Resolution 97-19 be introduced and read by title only by the Clerk. Clerk Williams read the legislation by title only.

ORDINANCE 97-43  
RESOLUTION 97-19

It was moved and seconded that Ordinance 97-43 and Resolution 97-19 be adopted. The synopsis and committee recommendations of Do-Pass 7-0 was given.

Lara Mears gave a brief overview of the 2.1 ac site. All streets in the area are private.

Cole said that this annexation corrects a boundary line with an earlier annexation for the Shoneys Motel .

Robert Shaw outlined a number of issues and concerns regarding this annexation. He said he owns Lot 6 along with Ron Rubeck and personally

owns Lot 7 (where BioPharm is located). He said he rented to them (BioPharm) under the name of KPharmaceuticals. He thought it was unfair that he was not legally noticed since the auditors office lists the property under his own name. He said he has county tax abatement on this tract of land that he has been gradually filling it in and has incurred major construction costs in order to develop the land This is a new business with limited funds, he is investing over \$300,000 in this start up building for them, and their situation is financially precarious. He said he is being annexed and he hasn't even gotten the building up yet. He talked extensively about problems with a sewer lift station and the costs that he has incurred because of it. He urged the council to delay this annexation until building Lot 6 and 7 is finished.

Banach asked about the notification that was sent to Mr. Shaw and Underwood said the notice went to StoneLake Corp on S. Walnut Street at Ron Rubecks office location. Shaw said that would be for Lot 6. Lot 7 is in Shaws own name. Underwood said StoneLake Corp is the only address listed for the lot and the proposed annexation is for BioPharm which is on Lot 7.

Sabbagh asked if the recent Industrial loan requires that the property be in the city.

Dan Sherman, Council Attorney, said that they did have to agree that if they became the owners of the property they would not oppose annexation.

Shaw said that BioPharm is renting right now and has an option to buy in five years. Shaw urged that more care be given to notifying people when these things are being planned.

Service asked why we are annexing before build out has been completed and Underwood said there is contiguity and there is an empty lot there and it was anticipated that it would be built out and completed by March 1.

Young asked when Shaw would like to see this annexed and Shaw said talked about the filling process and he thought that when Lot 6 is built out then it would be fair to annex him.

Sherman said he did not want to vote on this ordinance this evening and urged the council to postpone this until the December 17th meeting.

Banach also thought that the whole notification problem need to be clarified.

Underwood said we are not required, by law, to notify the property owners directly. All the public notifications were done and we go that extra step to notify property owners and we use the records of the Auditors Office. There may be cases where that information is incomplete or incorrect, however, all the legal requirements for this annexation have been met.

Service asked if the council passed a resolution some time ago, requiring notification. Dan Sherman said that a resolution was passed but noted that we did not create a legal right to notice and therefore no binding requirement upon our own process so this type of error would not lead to an invalidity.

It was moved and seconded that the combined Ordinance 97-43 and Resolution 97-19 be postponed until December 17, 1997.

The motion received a roll call vote of Ayes:6, Nays:0, Abstain (Banach, Pizzo).

ORDINANCE 97-43  
RESOLUTION 97-19

It was moved and seconded that Ordinance 97-46 and Resolution 97-22 be introduced and read by title only by the Clerk. Clerk Williams read the legislation by title only.

It was moved and seconded that Ordinance 97-46 and Resolution 97-22 be

ORDINANCE 97-46  
RESOLUTION 97-22

adopted. The synopsis and committee recommendations of Do-Pass 8-0 were given.

Lara Mears again gave a brief presentation of the 27 acre tract and .7 miles of new roads in this area.

The legislation received a roll call vote of Ayes:6, Nays:0 (Banach & Young were out of chambers).

It was moved and seconded that Ordinance 97-48 and Resolution 97-24 be introduced and read by title only by the Clerk. Clerk Williams read the legislation by title only.

ORDINANCE 97-48  
RESOLUTION 97-24

It was moved and seconded that Ordinance 97-48 and Resolution 97-24 be adopted. The synopsis and committee recommendations of Do-Pass 8-0 were given.

Lara Mears presented at brief description of the 18 ac PUD tract with no new roads in the area.

Sabbagh asked about traffic concerns in the area and if Kerasotes is responsible. Underwood said that the Plan Commission's conditions of approval required traffic counts and possible movie time table changes if traffic becomes a problem. If there is the provision that this non residential tract is not really part of the census requirement that requires delayed annexation, then it can come in 1999. Underwood said that it would be part of the TIF.

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

It was moved and seconded that Ordinance 97-49 and Resolution 97-25 be introduced and read by title only by the Clerk. Clerk Williams read the legislation by title only.

ORDINANCE 97-49  
RESOLUTION 97-25

It was moved and seconded that Ordinance 97-49 and Resolution 97-25 be adopted. The synopsis and committee recommendations of Do-Pass 4-1-3 were given.

Pizzo left the meeting at 9:30 PM

Lara Mears gave a brief overview of this tract with .5 miles of new roadway. It is a mix of commercial as well as residential. There are also two water companies, the city and the RHS private water company. The fire chiefs are talking about a number of things, but there is no signed agreement at this time. Underwood said that there would be an extension of the 12" water main to the residences and water would be available on a comparable basis. They could also remain on the RHS water system.

Fire Chief Kathy Saunders said these kinds of interlocals are not uncommon and are usually done on an informal basis. She said that she is talking with Chief Scott Garrett (Perry Twp Chief) and they are working out these kinds of agreements in a number of areas. Once worked out, the agreements would then be formalized by the appropriate boards.

Banach asked about if along with the interloccal and first response, second response agreements, have any consideration been given to a billing back program. Saunders discussed a few of the first/second automatic response and mutual aid things, like the Pointe fire and said there are a lot of details to work out to work out some of the joint response issues. Compatible radio systems are just one of the things that need to be worked out.

Richard Borden, an area resident, said there were a lot of if, maybe, and we hope to this whole discussion and he wondered why some of these discussion

have not already taken place.

Underwood emphasized that the area to be annexed would indeed have city fire protection .

Lara Mears said that she measured the Kennedy Drive area and determined that the road width is 19' and that is functionally comparable to a road in say Hoosier Acres and if this is annexed then street maintenance will take place on a regular basis.

Richard Katz discussed at length why he did not want to be annexed and he outlined all the things they did not want or need as a supposed benefit of annexation. He talked about current boundary confusion, property taxes, voting, emergency service, fire protection, sheriffs department services, utilities, snow removal, road services, storm drain cleaning services, curbside trash and recycling services, fire ratings, fire hydrants, and annual leaf collection. He did not believe that the legal fundamentals have been addressed during the preliminary annexation preparation and suggested that copying the format and content of a previous plan may not be sufficient and may not hold up in court. He referenced several Court of Appeals decisions, discussed at length the comparables offered in the resolution as not being equivalent or comparable, he challenged most of the sections itemized in the fiscal plan, ongoing negotiations between RHS and the city's water system.

Banach asked about this dispute and Underwood said that there is a dispute about the fact at the current time. Banach asked if there was a chance that they could be denied water. Underwood said that RHS buys all their water from the city and this annexation plan provides for a main to be run and people would have the option contracting with the city or RHS for service. The city does not take over other lines but would be offering a service at a comparable level.

Katz continued with asking about what the sense is to having the city come along and lay lines and pipes along the existing pipelines and again presented numerous citations from Indiana Code regarding utility regulations. He said he believed he has presented information that should provide sufficient cause for concern about a successful remonstrance and at these point should be resolved. He urged the council to delay the annexation since the date of effective annexation is delayed because of the upcoming census. He said there was no compelling reason for the council to rush to pass this ordinance. The full audio tape of Mr. Katz's comments are available on the tapes of the Common Council Meeting held for Wednesday, November 19, 1997 Tape 2/Side 2. Mr Katz spoke for almost 40 minutes.

Banach said he did not see any compelling reason why this annexation cannot be delayed and said he was voting no for that reason at this time.

Service said that she would support the annexation and believed that the residents of this area use and utilize the amenities and services that the city provides as they go in, out and through the actual city. She was confident that the necessary jurisdictional issues will be worked out and what has happened is that basically the city has come to their doorsteps.

Young said his hesitation is with the water negotiations that are going on and while he wants and supports annexation in general.

The legislation received a roll call vote of Ayes:5, Nays:2 (Young, Banach).

It was moved and seconded that Ordinance 97-50 and Resolution 97-26 be introduced and read by title only by the Clerk. Clerk Williams read the legislation by title only.

ORDINANCE 97-50  
RESOLUTION 97-26

It was moved and seconded that Ordinance 97-50 and Resolution 97-26 be adopted. The synopsis and committee recommendations of Do-Pass 4-1-3 were given.

Lara Mears gave a brief description of the 5 ac site that currently has a residence as well as day care facility on site.

The owner of the Teddy Bear Day Care along Rhorer Road east urged the council to delay the annexation. He discussed at length the many modifications they have had to make on site in order to comply with all state and local requirements. He was very concerned about the tax increase associated with 5 acres if it was to become part of the city and if they can continue in this in this cost and labor intensive business.

Sherman agreed that annexations are not the easiest thing we do and are sensitive to the financial impact on the areas involved. Banach echoed his earlier comments during the former annexation discussion. Young urged the state legislature to do something about property taxes. Cole asked everyone one to know that the council takes all the issues surrounding annexation very carefully.

The legislation received a roll call vote of Ayes: 5, Nays:2 (Young, Banach)

It was moved and seconded that Ordinance 97-48 and Resolution 97-24 be reconsidered for the purpose of making the necessary amendment.

ORDINANCE 97-48  
RESOLUTION 97-24  
AMENDMENTS

The motion received a roll call vote of Ayes:7, Nays:0.

It was moved and seconded that Amendment #1 be added to Ordinance 7-48 that would provide for a change of an earlier effective of January 1, 1999 if so approved by the state legislation pertaining to annexations and census years.

Amendment #1 received a roll call vote of Ayes:7, Nays:0

It was moved and seconded that Amendment #1 be added to Resolution 97-24 be considered. The amendment is the same as required in the accompanying ordinance.

Amendment #2 received a roll call vote of Ayes:7, Nays:0.

The legislation received a combined roll call vote of Ayes:7, Nays:0.

There was no legislation for First Reading.

FIRST READING

Young brought up the issue of skateboard parks and said that there are some people that would like to see something different than we had at Maplefoot.

PUBLIC INPUT

Dan Sherman asked the council to consider combining regular and committee meetings over the next month so that there would be adequate opportunity for discussion.

Richard Katz thanked Jeff Underwood and Lara Mears for their courteous and professional assistance throughout this annexation discussion. He was disappointed that after all the homework he did, the council ignored what he said and they are now taking the risk of remonstrance and legal action. It would not have hurt to wait a year and now this will go to an attorney to deal with. It was done just to prove that you could do it. People are being annexed who are further and further away from the university culture and we are going to see a change in voter attitude.

The meeting was adjourned at 11:00 PM

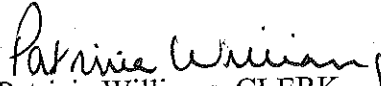
ADJOURNMENT

APPROVE:

ATTEST:



Timothy Mayer, President  
Bloomington Common Council



Patricia Williams, CLERK  
City of Bloomington