

In the Council Chambers of the Showers City Hall on Wednesday, October 16, 1996 at 7:30 PM with Council Vice-President Cole presiding over a Regular Session of the Common Council.

COMMON COUNCIL
REGULAR SESSION
OCT. 16, 1996

Vice President Cole gave the agenda summation.

AGENDA
SUMMATION

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

ROLL CALL

The minutes of October 2, 1996 were not approved at this time.

APPROVAL OF
MINUTES

Kiesling announced the upcoming Open House for the Metropolitan Planning Organization and pertinent dates for each session; also the Public Hearings for SR 37 and 45/46 ByPass; and finally a Public Information Meeting for testing at Lemon Lane next week.

MESSAGES FROM
COUNCILMEMBERS

Pizzo said that the dedication of the new Seminary Park Memorial took place this afternoon, site of the original IU Seminary and later used as our local high school was a lovely event and he urged people to enjoy it the park.

Pierce commented on a two day conference on Wireless Towers in Chicago, that he attended, and said that at the current time there are about 20,000 tower sites within the county and 100,000 more are needed. It's going to be a big issue. He also said that IACT has developed a task force to develop model ordinances in response to the FCC act and he will be chairing that group.

Cole reminded the public that the deadline for Franchise Fee Grant Applications is November 1; also our good neighbors Hoosier Hills Food Bank are having an Open House this Friday; Lois Gibbs, Environmental Activist and Love Canal Organizer will be talking and making numerous appearances on November 1 and 2 here in Bloomington, and finally: Bloomington Restorations will conduct a "Walk on the West Side" visiting various artist's studios (including our Ms. Cole!) on November 19 followed by a dinner at the Bancker Center.

Mayor Fernandez declared October as Domestic Violence Month, read a proclamation that he would do everything he could to make sure that Bloomington remained a safe and civil city for all of our citizens and he then introduced Toby Strout, Exec Director of Middle Way House. Strout said this is the 25th anniversary of Middle House, addressed the entire issue of domestic violence and talked about some of the things we as a community can do more about: welfare, homelessness, and violence directed toward women and children.

MESSAGES FROM
THE MAYOR

Fernandez updated the council regarding the sale of RCA Thomson by the French government and said we hope to hear something tomorrow. He praised the Thomson leadership for keeping the community informed. He also announced a new program for automatic bank withdrawals for water/sewer bills. He also said that BCAT would begin TV coverage of the Parks Board Meetings as well as the Board of Public Works. And he also referenced the Parks Dedication at Seminary Square this afternoon and particularly thanked former council member Lloyd Olcott as well as Dave Williams and the entire Parks Board for supporting this project.

Scott Wells talked about the county's upcoming approval of the zoning ordinance and he was very concerned about the development on 24% slopes in the county. He also talked about how the city had approved an 18% slope restriction. He said the Gentry East project was turned down in 1993 and now the county will approve development on 24% on that site. He asked if developers should be able to write ordinances that exceed the city's 2 Mile Fringe limits 2) and should they be able to write an ordinance that they

MESSAGES FROM
THE PUBLIC

benefit from financially 3) should a commissioner be able to vote on an ordinance that she at least benefits, if indirectly, financially.

Laramie Wilson also talked about Lois Gibbs visit to Bloomington.

Kevin Enright thanked all the people who have worked continually for the environmental health of our community and he and Cole praised Wells for a recent award from the Hoosier Environmental Council for his efforts for the protection of Lake Monroe.

Mike Carmin, strongly objected to Scott Wells's remarks criticism of the county's zoning ordinance and particularly his comments about Commissioner Poling who is not here and unable to defend herself regarding those comments.

Rod Young said that both the Plan Commission and the Common Council did not approve sewer service to the area that Wells was talking about.

Pierce asked for a point of order and if it was customary for a council member to respond and engage in debate with a citizen when it is the Public Input period of the meeting. Cole said it is not customary for the council to engage in a debate with the public.

Young objected to someone saying something that he believes is not true.

Pizzo said that public comments are public comments and we will not restrict the public in any manner

It was moved, seconded and approved by a voice vote that Jack Hopkins be appointed to the Human Rights Commission.

HUMAN RIGHTS
COMMISSION.

It was moved and seconded that Ordinance 96-32 be introduced and read by title only. Clerk Williams read the legislation by title only.

It was moved and seconded that Ordinance 96-32 be adopted. The synopsis and committee recommendation of Do-Pass 8-0 was given. Clerk Williams announced that this was a legally advertised public hearing.

LEGISLATION FC
SECOND READIN
AND VOTE
ORDINANCE 96-32

Deputy Mayor McNamara was available for questions and explained that the elected officials advertising deadline was different than other budget related legislation (30 days) rather than the usual ten day advertising schedule.

Banach said that even though he voted NO on the 1997 budget because of the tax increase, he would support this ordinance and donate his pay increase to United Way.

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

It was moved and seconded that Ordinance 96-30 be introduced and read by title only by the Clerk. Clerk Williams read the legislation by title only.

ORDINANCE 96-30

It was moved and seconded that Ordinance 96-30 be adopted. The synopsis and committee recommendation of Do-Pass 8-0 was given. This ordinance is a legally advertised public hearing.

It was moved, seconded that the ordinance be amended to reflect a Scribners Error in the legal description replacing the words northwest with northeast.

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

Toni McClure, Planning Department briefly described the vacation request between lots in Rockport Hills on Countryside Lane. Basically there was a 15' easement adjacent to Lot 34 and a house was inadvertently constructed over that utility easement by about 3' and this vacation would correct that problem. The petitioner has agreed to dedicate an additional 7.5' easement on Lot 33, thus allowing any utility service if needed in the future. Utilities approves of this proposal and there are no adverse responses from other utilities located in the area.

The ordinance, as amended, received a roll call vote of Ayes:7, Nays:0.

It was moved and seconded that Ordinance 96-25 be introduced and read by title only. Clerk Williams read the ordinance by title only.

It was moved and seconded that Ordinance 96-25 be adopted. The synopsis and committee recommendation of Do-Pass 7-0-1 was given.

Toni McClure, Planning Department, said that this PUD located on SR 46 is a 27 lot plan on 36 acres and this amendment would allow a church use to be considered. The petitioner will construct a decel lane along the full width of Lot 1 on the south side of the SR 46 with a passing blister on the north side of SR 46 as well as an acceleration lane.

Cole was concerned that the main strip of this development will be the northern extension of Curry Pike. McClure explained the configuration of the road that would connect with SR 46 and also explained that this has already been approved. She talked about the developer making sure that the access to the main road would be limited.

Cole was still concerned that this would be cutting through a residential subdivision with an arterial road that this will surely become in the future. She said she really didn't like it last year when it was approved and she doesn't really like it now. It just isn't good planning.

Kiesling was concerned that we are asking developers to put in some major roadways when they will have to be reconfigured when the SR is redone.

Rick Coppock, representing the petitioner, was available for questions.

Kiesling asked him if the first lot was going to be used for detention. Coppock said that was the original plan was to partially use it for an aesthetic pond and then, because of a lot of rock in the area, it was determined that would not be a very good location for a pond and the current drainage way will be maintained.

The ordinance received a roll call vote of Ayes:6, Nays:0 (Young was out of chamber).

It was moved and seconded that Ordinance 96-41 be introduced and read by title only. Clerk Williams read the ordinance by title only.

ORDINANCE 96-41

It was moved and seconded that Ordinance 96-41 be adopted. The synopsis and committee recommendation to Forward Without Recommendation of 8-0 was given.

Toni McClure, Planning Department, said this 8.5 ac PUD was approved in 1985 with only two uses: corporate offices and radio station and was left off the zoning maps last year when the new zoning ordinance was passed. There were concerns from adjacent property owners who were not aware that the PUD had been approved in 1985, with who the corporate office referred to, Tarzian or someone else. Also the concern about RS 3.5/PRO6 for the entire tract, including the Tarzian PUD in 1995. The RS 3.5 PRO6 is not the purpose of this ordinance, but if the PUD should be reinstated. The City is

the petitioner and the property owner has said that since there is so much confusion about what can go in the PUD, either the city should withdraw the petition to rezone or deny the rezoning with the understanding that it is being denied, not on the merits of the case, but based on the fact that the petitioner plans to come forward with a very similar PUD within a month or two which will be more specific in use and types of use.

Sherman, Council Attorney, explained that there is no provision within Indiana Code or Plan Commission local rules for a petitioner to withdraw, and the Common Council is only allowed to approve or deny a petition before them. He advised that the Council either approve or deny the petition and not entertain any motion to take it off the table. He said that since the petition received an approval from the Plan Commission, and if the Common Council failed to act, then this ordinance would go into effect in 90 days.

A discussion took place about the common sense aspect of a petitioner being able to withdraw their own petition, but Sherman maintained that just isn't provided for in Indiana Code despite the common sense aspect of it.

Mike Carmin, representing Tarzian, thought withdrawal would be the easiest, but he was happy to comply with Shermans position. He believed that there were neighbors who supported both zoning possibilities. He thought a withdrawal would eliminate that debate. Tarzian plans to file a new plan within 30 days for a PCD with very specific uses requested, clarifying the whole office/corporate use question and nothing that will engender a lot of in/out traffic, but an employee oriented office. He reiterated in several ways, that they just thought starting from "square one" was cleaner and easier and so that everyone would know exactly what was approved and what could go in there.

Pierce asked if we were broadening uses by adopting this under the new code or are we merely adopting all the terms of the 1985 agreement. He wondered if we were changing definitions.

McClure said if this ordinance is approved, we will be adopting the 1985 approval which does not include the consumer kinds of offices, but the definition of what that 1985 approval is, is where the problem comes in. If this were to be approved it would certainly generate considerable discussion at the Plan Commission level as to just what the 1985 ordinance said. If this is denied tonight, with no prejudice, they will go to the Plan Commission to clarify what uses could be permitted here.

Carmin said if this was to be approved tonight, then they would not be required to go before the Plan Commission with an amendment or if the use is not delineated, then the closest use is used to interpret what is allowed. There is no use designated as Corporate, and General Use would be the closest. He said that if there is concern that if the residential component were to approved under the RS 3.5/PRO6, Tarzian would not attempt to develop that site without coming back to the Plan Commission

McClure said that they are in agreement with the petitioner, in that corporate offices do not necessarily mean Tarzian corporate offices. The zoning can't be based on ownership or a particular firm. Even under the old PUD, the staff still sees the uses as limited to non-consumer office use.

William Cohen, 1016 S. Highland and a resident to the north of this tract, said that the 1996 Plan Commission met to correct the master plan, it was an attempt to reaffirm the restrictions that were written in 1985 and enforced. It is only after the Plan Commission made that clear, did Tarzian make that clear. In August they wanted that correction, now they want the measure be withdrawn from consideration. He said that Tarzian hoped to build a project different in size and nature than the 1985 legislation allowed. They want a NO vote so that it becomes RS 3.5/PRO6 and they can then be free to develop up to 6 units/acre or in essence the zoning is changed by default. And this happens with a default and it changes the zoning. He asked that the council to return it to the way it was before 1985 as an RE1 and that would certainly reduce a lot of this confusion. He said the

master plan/zoning ordinance of 1995 changed the zoning from RE1 to RE 3.5/PRO6 with none of the neighbors knowing about it without exception. If the master plan is to be reviewed in 1997, he urged the council to review the Tarzian property very carefully and return it to a compatible designation, like RE1. In the 1985 plan the entrance was placed as coming in from Hillside. The current proposal sites the development fairly far north on the tract and a very long driveway from Hillside that could then have a cut in from any development as well as a connection from Highland Avenue making this a very long access road.

Charles "Pete" Dunn, a property owner, said that in 1985 current State Appeals Judge Ted Najam said that the Tarzian Corporation wanted to do a few things with their property and bring their corporate offices to this land, they had an architect and size and number of employees were discussed and Dunn supported that plan then as well as now. It's now being turned every way except what the neighbors understood the original plan to be. Now they want to change corporate office and the exact sqft they were going to build and call it "office" now. This is spot zoning and perhaps it should just go back to RE1.

Chris Matheu, a neighbor, said that they made a decision to purchase their home based on the RE1 zoning in place, with noise and traffic at a minimum. She then read the goals and purposes of the master plan process. She expressed concern about the results of the intent of the plan and the contrast between the plan the ordinance. There is a significant difference between the earlier zoning ordinance of RE with a restricted PUD insertion and the RE 3.5/PRO6. And then a PUD factor increases the land use from one unit/acre to a possible 6 units/acre increasing the population density from approximately 180 residents to 1080 residents. She urged the council to reexamine the entire zoning to reflect the zoning of the surrounding areas as well. The PRO6 zoning is just too dense.

Scott Wells said the PRO6 designation is resulting in the worse kind of urban sprawl with less and less green space and a lot is being lost.

Pierce thought Option #1 - leaving the zoning as is (3.5/units with PRO6) which would allow a new PUD or do a straight residential project. Option #2 would stay the course and if approved, we would go back to the 1985 PCD which allowed what they said back then what they said they wanted: a corporate office for themselves or someone else. Option #3 is an amendment of the 1985 plan which would require the entire Plan Commission and Council approval. He said he would vote to approve the 1985 plan. Sabbagh thought that denial would be the best way to start the whole process again as if it was the beginning.

Pizzo said the cleanest way of handling this is to deny it at this time rather than keep worrying about all the possible legal ramifications.

Young asked what the underlying zoning was and McClure said she did not have file going back to the original zoning before the PUD in 1985. Young talked about having to have a buffer between the existing neighborhood and any development that might be zoned at PRO6 to avoid have higher density up against established larger lot zoning. Young was concerned that we are denying the city's own recommendation. We have to have a little bit of trust in what the owner says he's going to do.

Cole asked about the road and if it would become a N/S thoroughfare. McClure said it would have to be approved by the Commission. The 1985 plan approved the access from Hillside and a petition for office use with an access road through the existing neighborhood would not be approved.

The ordinance received a roll call vote of Ayes:1 (Pierce), Nays:5. The motion was

denied.

It was moved and seconded that the following legislation be introduced and read by title only by the Clerk. Clerk Williams read the legislation by title

LEGISLATION FOR
FIRST READING
ORDINANCE 96-31
ORDINANCE 96-44

Ordinance 96-31 To Establish a Telecommunications Non-Reverting Fund.
Ordinance 96-44 To Amend the Bloomington Zoning Maps from IL/IS to PUD, and to Approve the Preliminary Plan re: 1020 W. Allen St. (Williams H. Lutgens, Petitioner)

There was no public input.

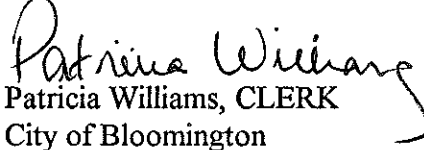
PUBLIC INPUT

The meeting was adjourned at 9:50 PM.

ADJOURNMENT

APPROVE:

ATTEST:



Patricia Cole, Vice President
Bloomington Common Council

Patricia Williams, CLERK
City of Bloomington