

In the Council Chambers of the Municipal Building held on Wednesday, December 14, 1994, at 7:30 P.M. with Council Vice-President Sherman presiding over a Regular Session of the Common Council.

COMMON COUNCIL
REGULAR SESSION
DECEMBER 14, 1994

Roll Call: Service, Swain, Bonnell, Pizzo, Hopkins, Cole, White, Kiesling.
Absent: Sherman.

ROLL CALL

Council Vice-President Pizzo gave the Agenda Summation.

AGENDA SUMMATION

The minutes of September 7, 1994 were approved by a voice vote.

APPROVAL OF MINUTES

Service wished everyone Happy Holidays. She noted with regret the passing of Jack Rogers and the resignation of Parks Director Norm Merrifield. Swain and Hopkins also expressed regret on Merrifield's resignation. Hopkins introduced a guest, Marcello Cardona, who is city councilmember from Monteverdi, Brazil and Indiana's sister state in Brazil. Cardona expressed his admiration of Bloomington. Cole expressed her appreciation of Merrifield's accomplishments and the contribution of Rosemary Fraser to the Bloomington Arts Commission and the Bloomington arts community. White congratulated the IU's NCAA finalist soccer team. Kiesling added her appreciation of Merrifield and wished peace to the world and the Council. Pizzo added his holiday wishes.

MESSAGES FROM
COUNCILMEMBERS

Mayor Allison called County Commissioner President Tim Tilton to the podium to help thank GE Plant Manager Tim Kearns, who has been transferred out of the state, for his contributions to the community. Allison read an encomium for Kearns and Tilton added the county's gratitude for Kearns contributions. Kearns expressed his appreciation for the time he and his family have spent in Bloomington.

MESSAGES FROM THE
MAYOR

Mayor Allison introduced Jack Mulholland, director of the Community Foundation, and Ed Williams, a foundation board member. Allison said the foundation had achieved a milestone which allowed it to achieve its goal of functioning on interest earned without decreasing its capital. She reminded the community that all donations to the foundation up to 1997 are matched 50% by a contribution from the Lilly Foundation. Mulholland noted that the foundation's endowment had reached the \$1 million mark in its endowment funds and spoke of a \$50,000 pledge from Thomson Electronics for arts education in public schools in Bloomington and Monroe County and a gift from PTS for community beautification. Mulholland thanked the City for \$16,000 in operating expenses. Allison added that the other organizations can use the foundation to manage the cash raised as part of fundraising efforts.

Mayor Allison described how a subcommittee of Community Alliance for Lifelong Learning has gone "hog wild" leading to what has become known as HoosierNet. She turned the discussion over to Councilmember Bonnell, who introduced the HoosierNet concept, explaining that it would provide access to local data that the community chose to make available, and serve as a gateway to other information databases and networks, such as the Internet. Bonnell introduced Mike Chui (sp) who said that HoosierNet has been set up as a non-profit with the mission of providing advanced computer networking services to all segments of the community at the lowest possible cost. Chui demonstrated a HoosierNet prototype and the network access capability through WorldwideWeb. Bonnell thanked the Board of Public Works for a grant that allowed HoosierNet to get non-profit status and expressed his excitement over the nearly limitless possibilities that the HoosierNet may make commonly available.

Ray Sigmond addressed the Council. Sigmond said he had been victimized by the misconduct of the Bloomington Police Department and convicted of a crime he did not and could not have convicted due to judicial abuses. He requested that the next day's meeting of the Board of Public Safety, where he would present evidence of this misconduct and abuse, be televised. Sigmond stated that the judicial and law enforcement systems have prevented a biological parent of visiting and protecting an endangered child, and described events surrounding the situation. He repeated his request for televised coverage of the Board meeting. Pizzò explained that the Council does not have the authority to mandate televised coverage of a board meeting, and that there were procedures in place for filing formal complaints about the actions of the BPD. He recommended that Sigmond follow these procedures.

It was moved and seconded that Ordinance 94-70 be introduced and read by title only. Clerk Williams read the ordinance by title only. It was moved and seconded Ordinance 94-70 be adopted. Williams read the synopsis and noted there was no committee recommendation.

LEGISLATION FOR
SECOND READING
ORDINANCE 94-70

Public Works director Ted Rhinehart explained that the ordinance reflects recent recommendations by the Traffic Commission for changes in the Municipal Code. Rhinehart went over the specific Code changes in the ordinance and the reasoning behind the recommendations. He thanked Kiesling for a proposed amendment to the ordinance which would remove a handicapped parking spot from the ordinance's reduction in allowed parking time for certain spots on 7th St.

It was moved and seconded that Ordinance 94-70 be amended to remove the handicapped spot from the ordinance's reduction in parking limit. Steve Creech spoke in favor of the amendment.

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

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

It was moved and seconded that Ordinance 94-69 be introduced and read by title only. Clerk Williams read the ordinance by title only. It was moved and seconded Ordinance 94-69 be adopted. Williams read the synopsis and noted there was no committee recommendation.

ORDINANCE 94-69

Bryan Hacker with the City Controller's office explained that ordinance annexed 2 parcels, 2.7 acres, that would be incorporated into the Adams Crossing development. In response to a question from Kiesling, Hacker explained that although the plan is to later rezone the parcels and add them to the TIF, they must be within the city first, and this ordinance only annexes those particular parcels.

Doug Jones, representing the petitioner, addressed the Council. He explained the voluntary nature of the annexation and the plan to request a rezone next year. Hopkins asked if the neighbors had been advised. Jones said there had been two meetings with the neighbors and informed the Council about some of their questions and comments. Jones thanked City staff members for helping to bring the ordinance before the Council in a timely manner.

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

It was moved and seconded that Resolution 94-57 be introduced and read by title only. Clerk Williams read the ordinance by title only. It was moved and seconded Resolution 94-57 be adopted. Williams read the synopsis and noted there was no committee recommendation.

RESOLUTION 94-57

Bryan Hacker, from the City Controller's office, explained that the fiscal plan in the resolution was geared towards the proposed development, based on comparable areas, not what is currently there. Hacker said the plan, and the costs given, are somewhat "overkill" based on an entire shopping center as opposed to one anchor store. Kiesling asked about planning, inspection and other costs. Hacker explained that such costs to the City would not be specific to the annexation itself.

Cole asked about the merging of the commercial and residential areas. Doug Jones, representing the petitioner, described plans for tree planting and buffering, and that such plans would be forthcoming in development and outline phases that would accompany the rezone petition next year. In response to a question from Hopkins, Jones said there would be no exit onto Anna Lee Lane, due in part to neighborhood opposition and other available alternatives. Jones also mentioned a desire to break the Kroger-Marsh grocery monopoly by recruiting a different, comparably-sized store into the development of this area. Cole asked Jones to include the Near Westside Neighborhood Association in future discussed and Jones expressed a willingness to do so.

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

It was moved and seconded that Ordinance 94-67 be introduced and read by title only. Clerk Williams read the ordinance by title only. It was moved and seconded Ordinance 94-67 be adopted. Williams read the synopsis and noted there was no committee recommendation.

ORDINANCE 94-67

Bryan Hacker, from the City Controller's office, explained that he "goofed" in the legal description of land to be annexed in Ordinance 94-53 and that this ordinance corrects the error. Council Attorney Sherman explained that portions of the original ordinance were correct, and that discussion, maps and publicity concerning that ordinance communicated its intent.

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

It was moved and seconded that Resolution 94-58 be introduced and read by title only. Clerk Williams read the ordinance by title only. It was moved and seconded Resolution 94-58 be adopted. Williams read the synopsis and noted there was no committee recommendation.

RESOLUTION 94-58

Matt Pierce, president of the Bloomington Telecommunications Council (TCC) addressed the Council. Pierce said that the resolution is a final step in the rate regulation process made possible by the 1992 Cable Act. Pierce explained that "basic" tier rates -- and the associated installation and equipment charges -- are regulated locally, and "expanded basic" or "cable programming" rates are regulated by the Federal Communications Commission (FCC.) He explained that the TCC discovered that TCI (the City's cable franchisee) is charging significantly higher rates for commercial customers than for residential customers, and it is the City's interpretation of the FCC's regulations that this is not permissible. TCI is challenging City's authority to regulate commercial rates and that issue is pending before the FCC. Thus the resolution before the Council is a

partial final rate order and that the commercial rate issue was in abeyance until there is a ruling from the FCC.

Pierce showed the Council differences in programming over the years contained in the basic and expanded basic services, and explained that this, as well as the billing break out of the franchise fee, make year-to-year rate comparison's tricky. He went over recent rate trends and said that the resolution before the Council approves a \$9.04 per month rate for basic service. Pierce went over price/rate trends for the equipment and installation required for basic service, and the rates for such proposed in the resolution before the Council. He said that now that rates are regulated, the franchisee may charge actual costs plus up 11.25% on equipment and installation. Compared to historical charges, Pierce said that these proposed rates are mostly good news for consumers with the exception for fees for downgrading services. And the FCC allows the fee paid to it by franchisees to cover the cost of regulation to be passed on to customers, thus the "Regulatory Fee" of \$0.03/month.

Pierce said that with adoption of the resolution the included rates would go into effect and be capped with some allowed exceptions: a regulated annual increase for inflation, a potential quarterly increase to cover increases in TCI's "external costs" such as ESPN raising their fees to TCI or any additional franchise requirements, and an increase to cover the cost of adding additional programming. Pierce said the last of these wasn't presently an issue with TCI in Bloomington since they don't currently have the capacity to add additional programming. Pierce said TCI planned to make an inflation and external cost rate increase sometime around February, but this concerned the expanded the tier, which is beyond the City's jurisdiction.

It was moved and seconded that the following amendment be considered: that a proposed amendment to the resolution merely clarifies a "Whereas," clause about TCI's challenge to the City's authority to regulate commercial, as opposed to residential, rates.

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

Hopkins asked if this resolution addressed the late fee issue and Pierce confirmed that that is a completely separate issue which this resolution does not address. Hopkins said he was challenging the late fee and has heard nothing. Pierce expressed regret that the relationship between the TCC and TCI had gotten so hostile on the brink the franchise renewal negotiations. He said that he is confident that the City is right on the late fee issue and that it is a large sum of money at stake: TCI received over \$98,000 in late fees in 1993.

Hopkins asked about the packaging of certain programming and the prospects of a la carte services. Pierce said this was the trend in the industry, fostered in part by the new rate regulation and potential competition from telephone companies someday providing video-on-demand. But he warned that market forces would probably then increase the prices of the more popular channels.

Kiesling expressed concerned about the amount of the late fee. Pierce commented that it was particularly egregious for the basic-only cable subscriber who would pay a \$5.00 late fee on a \$8.82 bill due before delivery of the service. He added that contesting the practices of a large

telecommunications corporation before judicial and regulatory bodies is often a very expensive process for a municipality, which might reasonably decide that it wasn't worth it. Bloomington has managed so far to advance its challenges through the expertise of the TCC.

Swain asked if the 2,200 customers getting basic only included residential and commercial customers. Pierce said he didn't know and mentioned that there were about 15,000 total subscriber households within City corporate limits.

Cole said that in an era of concern about government regulation that this was a clear-cut case where regulation was very necessary. Pierce added that it was the lack of competition which made regulation necessary, and that Congress has ruled that when 30% of an area has an alternative programming service, the right to regulate disappears.

Bonnell asked how numbers and rates were verified. Pierce explained that a rate-regulation consultant was hired to examine the relevant documents to see that they were in line with industry standards. Pierce said that with regard to some internal numbers there was a fair amount of faith involved since it would require an audit to verify them, which is expensive. Audits are a right granted under the franchise agreement and may be used soon to check on franchise fee compliance.

Bonnell asked whether the City legal department was the counsel for the TCC. Pierce said he assumed so since that is who he talks to when he has legal questions. Pierce said there had been an interaction where City legal defers to him on FCC issues and city handles local and state issues such as late fee. Bonnell said he was pleased to hear that the interaction was good. He said that the City Legal Department was very good but at times risk adverse to the point of having feet-of-clay and hopes this is a situation where they will aggressively pursue this issue.

Bonnell asked about the install-reconnect fee when switching service between two cable-ready houses. Pierce said he thought they do have to actually send a truck out in that situation and that the FCC has allowed them to charge actual cost plus 11.25% markup, actual costs including things like depreciation on trucks etc.

Scott Cooley of TCI explained the process of changing service from one address to another, which includes coming out to the new address and making the physical connection.

Bonnell asked what the justification was for charging to downgrade service. Cooley said they have to send a truck out and they were allowed to cover those costs which were previously built into the over service charge.

Pizzo asked what happens if the Resolution was not passed. Pierce said TCI could go ahead and put in rates.

Bonnell asked Pierce if the rates for equipment and installation put in place in July would change and Pierce said they would stay the same.

Kiesling asked about charges and responsibility for cable wiring inside the home. Pierce said the cable operator is responsible for up to 12" from where cable enters the house and can charge hourly fees for problems inside the house. Pierce mentioned that TCI sells a wire

maintenance agreement to insure repairs inside the home, that the pricing of such, because it is optional, is unregulated.

Lynn Coyne spoke on behalf of TCI on the subject of late fees. He expressed TCI's very strong feelings that on a policy level the TCC's actions will end up costing customers in the long run. He also said there are not legal grounds to charge the late fee based on the franchise agreement and other things. He said he delivered a letter late this afternoon to the City legal department requesting a discussion the late fees issue and containing an offer to suspend late charges for a reasonable period of time. but is dismissed out of hand. He said TCI doesn't want to litigate this but wants to talk about it, but "you" don't want to listen.

Bonnell explained that the City has listened and proceeded through its duly authorized board, the TCC, which, upon advice of legal counsel, has duly adopted a rule which TCI has chosen to ignore. Coyne said "that implicit in that is the assumption that you're always right."

Hopkins also asserted that TCI has chosen to ignore a legal, binding rule and that he was angry about it. Pierce refuted Coyne's argument that the City has refused to listen to TCI, and that the late fee rule was in fact modified by the TCC to accommodate claimed limitations in TCI's billing system and the desire to minimize their costs.

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

It was moved and seconded that Ordinance 94-68 be introduced and read by title only. Clerk Williams read the ordinance by title only.

ORDINANCE 94-68

It was moved and seconded Ordinance 94-68 be adopted. Williams read the synopsis and noted there was no committee recommendation.

Nancy Hiestand from the Planning Department addressed the Council. She mentioned that this was the fourth public hearing on this property and the petition for historic designation. The petitioner wants commercial use for part of the building. The priority was that it is a significant architectural property. Petitioner came forward with a preservation plan for this Queen Anne building built around 1870. Plan Commission recommended approval of this petition.

Dee McIntyre, representing the Historic Preservation Committee, addressed the Council and said the Committee was very pleased with the preservation plan which it approved. He said the petitioner received the Certificate of Appropriateness from the historic committee and the Plan Commission.

Lynn Coyne, representing the petitioner, showed transparencies of the property and described improvements being made to the property and described the helpfulness of the Historic Committee. Kiesling asked about the parking spaces described in her materials on the project, and Coyne responded that 12 was probably an optimistic estimate of the number of spaces.

Cole asked about the particular color choice. McIntyre said the Historic Committee does regulate paint color choices albeit in a liberal fashion. One guideline is to avoid neighborhood objections. The color is not necessarily historically accurate, but appropriate.

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

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Kiesling announced that she would not be returning as the Council's representative on the Solid Waste District Board and that the Board would be meeting before the Council's next meeting. Kiesling nominated Jim Sherman to replace her on the Board. The nomination was approved by voice vote.

Pizzo announce that the next meeting of the Common Council would be Tuesday, January 3 at 7:30 p.m. in the Council Chambers.

There were no petitions or communications from the public.
The meeting adjourned at 10:15 p.m..

PETITIONS FROM
PUBLIC
ADJOURNMENT

APPROVE;

Iris Kiesling
Iris Kiesling, President
Bloomington Common Council

ATTEST;

Patricia Williams
Patricia Williams, CLERK
City of Bloomington