

In the Council Chambers of the Municipal Building held on Wednesday, January 17, 1990, at 7:30 P.M. with Council President Kiesling presiding over a Regular Session of the Common Council.

COMMON COUNCIL
JANUARY 17, 90
REGULAR
SESSION

Roll Call: Regester, Young, Foley, Kiesling, Fernandez, White, Service, Hogan. Absent: Olcott.

ROLL CALL

President Kiesling gave the agenda summation.

AGENDA
SUMMATION
APPROVAL OF
MINUTES

The minutes of January 2, 1990 were approved by a voice vote.

Service invited everyone to attend the open house at the new Bloomington Recycling facility on South Rogers this coming Saturday, January 20. Admission is two things that can be recycled. Service thanked everyone who has been coming to meetings and providing essential public input on a variety of issues especially the County Health Board and our Plan Commission meetings. She urged the health board to hang in there regarding their discussions on a county-wide no smoking ordinance in public places.

MESSAGES
FROM CMS

White recognized a cooperative project between Beta Theta Phi fraternity and the City in regards to beautification of the tree plots in front of their house on 10th street. The young men of the fraternity also presented a check for \$200 to the Bloomington Tree Fund and presented the money to Mayor Allison and Lee Huss, City Landscaper.

Fernandez welcomed everyone to the meeting this evening and gave the Planning Department four stars for their efforts in the past weeks and the many hours of Plan Commission meetings in an effort to select a master plan consultant.

Foley said the new skateboard park is a big success and he congratulated the parks department for their effort.

Kiesling thanked Channels 3 and 29 for covering all the extra meetings these past few weeks for both the city and the county. She also thanked the Sanitation Dept for their efforts on behalf of the recycling effort.

Mayor Allison presented the State of the City address attached to the original minutes.

STATE OF THE
CITY ADDRESS

The council recessed for 10 minutes.

RECESS

Mueller briefed the Council on the master plan consultant interview process. He also noted that it would be taped by Channel 29 and be aired next week. All pertinent materials are available for examination in the Planning Department.

MESSAGES FROM
CITY OFFICES

Kiesling said the Public Transportation Corporation is doing a study, she is sitting in on the meetings and will keep the Council informed as the process develops.

There were no appointments to boards or commissions.

It was moved and seconded that Ordinance 90-4 be introduced and read by title only. Clerk Williams read the ordinance title. It was moved and seconded that Ordinance 90-4 be adopted. The committee report and recommendation of Do-Pass 7-1 was given.

LEGISLATION
FOR SECOND
READING
ORD. 90-4

Tim Mueller said the segment of alley to be vacated is surrounded by the petitioner's own property. It is part of a pattern of alleys extending down to 15th Street and none is developed. All are being used as yards by the surrounding property owners. We do not foresee any future use for this alley. There will be a rezoning request coming

to the Council at a later date associated with this alley vacation and the Planning staff will be recommending DENIAL.

Pete Dunn was available for questions. Fernandez said that there is the possibility for potential development in this area but there are concerns about going with a straight RH and the petitioner has made some efforts to go out and get support in the neighborhood. He hoped that we would continue to negotiate and talk about PUD's instead.

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

It was moved and seconded that Resolution 90-1 be introduced RES. 90-1 and read by title only. Clerk Williams read the resolution title. It was moved and seconded that Resolution 90-1 be adopted. The committee report and recommendation of Do-Pass 7-0 was given.

Service said that there has been considerable input regarding this resolution and just what should be included. This is a way of keeping our own house in order.

Jane St. John said that this is a method of bringing our own recycling efforts full circle. She said, in response to White's question about recycled motor oil, that the industry's response is quite negative and there are no places in the midwest that carry a recycled oil that is good enough to insure the performance desired in municipal vehicles or the safety of machinery that is very expensive to begin with. Motor oil can be recycled and used for fuel. Register urged the inclusion of styrofoam in our recycling efforts.

St. John said there will be a paper co-op that will start taking paper. (*Bloomington Recycling*)

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

It was moved and seconded that Resolution 90-2 be introduced RES. 90-2 and read by title only. Clerk Williams read the resolution title. It was moved and seconded that Resolution 90-2 be adopted.

Fernandez read the resolution in its entirety and the purpose is to develop a collective resolve to protect our environment. Parks and IUSA are also involved. Earth Day was first presented in 1970 and at that time important federal legislation came out of that first initiative. In 1990 many needs are still unmet. This year we celebrate our successes and acknowledge that there is still much to be done.

Jane St. John said that the events on Kirkwood would stretch from downtown to the university with parades, costumed endangered species, composting demonstrations, videos, and a quiz show titled the Waste of Bloomington. Lee Huss said that Arbor Day is the finale to the Earth Day festivities.

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

It was moved and seconded that Ordinance 90-1 be introduced and read by title only. Clerk Williams read the ordinance title. It was moved and seconded that Ordinance 90-1 be adopted. The synopsis and committee recommendation of Do-Pass 7-0 was given. ORD. 90-1

Tim Mueller said that the initial petition was submitted by most of the owners, 16 of 18 in this single family area. It is something of a zoning hodgepodge. The site in question is RH and occurred in 1973 as part of the city comprehensive Plan. ~~There were~~ numerous public hearings starting in October, November (1) and finally wrapped up on December 4, 1989. The first step was for the legal department to do

some research on involuntary rezoning of property who had not petitioned. The statute says that 51% of the owners may petition. Legal research was inconclusive and no particular constraints advise that this could not be done. In the midst of the process, Talbot, one of the property owners who had not signed had sold his property to Randy Frazier and that was brought to the Plan Commission's attention at the middle hearing. Action was delayed until the opportunity to notify Mr. Frazier took place. The staff report cites a number of issues pro and con. In support, the old 1969 master plan shows this as general residential with 5.5 units per acre and considerably lower than RH would allow. The prevailing use is sound, stable single family residential. Staff opinion said this was the most appropriate use of the area. Apartments could afford considerably more activity than the existing residential patterns. The parcels that have not participated fall into a transitional location between the rest of the neighborhood and commercial. The alternatives brought up during the middle hearing were, consider rezoning only those who have petitioned, or do the entire rectangular block or leave out lots that are transitional. At the December 4 hearing more alternatives were added, namely RL for the transitional lots and the vote was in favor of rezoning the entire area. The problem tonight has to do with notice to Randy Frazier, purchaser of Lot 8. In the course of this process the ownership transferred from Talbot to Frazier. The process was initiated and apparently the records still identified Talbot as the owner. When we learned of the Frazier ownership we forwarded a letter, certified on November 21, however Mr. Frazier never retrieved his certified mail from the post office. Apparently he received notice from the post office on November 24, December 7 and December 12 and on the 22nd of December the post office forwarded the notice back to us. He was notified of the return of his letter on January 2, 1990 if all the stamps the post office placed on the envelope are correct.

Fernandez asked if all other public notices were complied with and Mueller said yes.

White first heard of the neighbors' concerns last summer that the 20-25 year residents were in a neighborhood that was going to change significantly since they moved there with covenants running out where it was to stay single family residential and were dismayed that in 1973 the City changed all that and they did not have the necessary input at the time. It went on to the Planning Commission. White said he thought the RH zoning might have been a mistake back in 1973.

This has continued over the years to be a very stable residential area. Lots 17 and 18 were not in favor of the rezone because the only thing that could be done with it was business interests and that is not what we are looking at here at all. Finally the majority of residents participated in the Plan Commission process.

Foley associated himself with White's remarks and would hate to see this come down to who picks up their mail or who doesn't. The overwhelming merit must go with the people who have invested their lives in this area.

Service said we have seen before a way to do in a neighborhood is to begin nibbling away for what would be a discrete block of property. This person is out of town and cares so little about a community that he will not even pick up his mail that comes from that community.

Young asked for clarification of the notification process. Kathy Saunders, Council Attorney, this kind of rezoning is enabled by statute. The language also suggests that property can be rezoned against a property owner's will and desires and 49% can disagree but the petition can still go before the Plan Commission. The courts use a balancing test looking at the public benefit against the detriment to the

private property owner. If the court feels that the benefit to the public outweigh the detriment to the particular property owner that satisfies the court review of it. There are no guarantees that we can successfully defend this matter of notice in court. But we feel that we have fairly strong arguments on that point. The Plan Staff complied with all the requirements that the Commission has established in their own rules and regulations. We did not treat this any less than any other petition. The petitioner does have actual notice of this request or this issue would not have come up.

Mr. Kieft said these meetings have been going on for months and now at the last hour this comes up. He said he hoped the Council would do their part.

Chester Frame also spoke in favor of the petition.

Larry Brodeur, representing Randy Frazier and Midwest Development Corporation, Midwest Development Corp owns Lot 8. It was purchased August 10, 1989 and was zoned RH at that time and at this time. The purpose of purchase was to develop that lot into multifamily units. Mr. Frazier or his corporation did not receive any notice of the October 2 or November 13 meeting and December 4, 1989. The first two meetings occurred without notice to Mr. Frazier or his corporation. The only notice sent directly was sent to Mr. Robert Talbot and apparently there had not been a change at the Courthouse. Mr Talbot then informed the Plan Commission staff and told them it was owned by Randy Frazier. Notice was sent to Randy Frazier in California and was mailed on November 21, 1989. The first notice went to Mr. Randy Frazier in care of Midwest Development Group, with the office address in California, was sent by the post office in California on December 7, 1989 again being sent three days after the 12/4 meeting. Even if Mr. Frazier got the notice it would have been three days after the third meeting on this topic. The envelope indicates that a third notice was sent 12/12/89 and finally returned to the Plan commission on 12/22/89. Mr. Frazier left California shortly after the 7th of December for Bloomington and that he himself did not receive this direct notice. If his office staff got this they would not have picked it up because it had his name on it and they pick up his business and not his personal mail. Neither Mr. Frazier or his business had any specific notice by certified mail as is required. At the site, today, Mr. Frazier was informed that the zoning was going to change (3:30 P.M. today) Mr. Frazier met with Mueller immediately and was told that this would be heard this evening. This lot was purchased specifically for investment purposes and was bought at a price \$20,000 over its appraised value as a single family residence. In addition plans have been submitted to the ABC in Indianapolis with approval expected at any time. Mr. Brodeur said that in his opinion there are serious, serious problems with the notice that has been given to Frazier. Certain things must be done and Mr. Frazier did not have notice other than this time today and if the matter were taken to court there would be strong arguments about the notice he received. Brodeur asked that action not be taken on 90-1, perhaps it be tabled for a period of time, giving Frazier an opportunity to make our arguments on the merits of the ordinance with proper notice and the opportunity to be heard. Brodeur said this legal problem exists and very seriously. He asked that the Council table the entire ordinance or exclude Lot 8 from the ordinance.

Fernandez said the second alternative cannot be considered. The Council can only approve or deny, but not amend. Hogan asked if the purpose of certified mail is the receipt in hand or the fact that it was mailed and received or not, is that satisfactory?

Linda Runkle said that the Plan commission rules state that a notice is mailed by certified mail at least 10 days prior to the hearing a notice of the hearing (postmarked 11/21/89) and it arrived California 11/24/89. The Plan Commission rules also state that you must provide proof, that of the certified mail receipt. We have that and we did it. The return receipt card is not addressed or whether or not it is required. As far as the harm in tonight's case, the petitioner is here tonight, he can make the argument about the harm and you have to balance the public interest against the harm to the individual. The notice question is a good one but it would be unfortunate if this was made or broken on a procedural argument. There isn't a definite answer on this.

Kiesling asked when the legal notice was published in the newspaper (tape change). Mueller said that dates of publication are included in the file and if the return receipts are required to be in hand, one adjacent property could stonewall the progress. Kiesling asked why the court records were not changed and Brodeur said he has not had time to check because of the late involvement on his part and the Recorder's Office being closed. Mueller said the early notices in October were based on the courthouse records.

Service said the ordinance should not be tabled and suggested that Frazier address the question. Brodeur said that adequate notice and opportunity to be heard has not been adequate. Foley questioned the personal-business mail point raised by Mr. Brodeur. He hoped it would be decided on the merits of the request and not on technical issues.

Mr. Frame said Talbot told the Fry people "what would you think if I put some apartment buildings on the back of my house". This started a long time ago and we came to the Plan Department. Mr. Kieft checked at the courthouse and sent his original notices to Talbot.

Mueller said the first legal notice was published 9/22/89, 11/3 and 11/24/89. The notice was not sent to Randy Frazier in care of Midwest Building. It was sent to Randy Frazier, Midwest Building.

Hogan thought the downzoning has some merit and he would hate to jeopardize what we do tonight because we didn't give Frazier a chance to be heard or it wasn't adequate. Hogan said he would vote in favor but would hate to end up in court and have it all thrown out in six months because we didn't do it right. Young agreed with Steve, suggested tabling but wanted it done legally.

Brodeur said if Ordinance 90-1 is passed he felt that Mr. Frazier would want him to go forward with litigation in this matter. The particular area does not have any single family zoning in the immediate area and he iterated the various zonings in the area. He pointed out an apartment complex of 300 units directly across Woodburn Drive and the top of the area is all business. This lot is in an old neighborhood and is very much a changing area. Looking down the road it is unlikely that it will stay single family. This area is not strongly residential except for these lots. Frazier acted in good faith, buying when it was zoned RH. Brodeur said Frazier's corporation has suffered significant deprivation and there is strong feeling among the Councilmembers that a private interest that will be served for the 15 petitioners who will get to keep their neighborhood the way they want it. If no one has said that is good for the city or all of our city planning. There isn't a great public interest to be served but there is a

great private interest. The staff recommendation did not include rezoning of Lot 8. This was one consideration of the staff and considered Alternative 2. The master plan of the early '70's included this as RH and while Councilmembers have said this was a mistake, he wondered how they know it was a mistake at that time. The entire area has very little residential housing. He again asked for tabling the ordinance or deny passage.

Kiesling said it was in the public interest to consider this ordinance, pass it now as is and then proceed as accordingly as possible. The private interest will not gain if it stayed the way it is, so they are not getting that much out of it then just for the community.

White said on the notice issue, it was mailed 11/21 and arrived on 11/24/89 and to believe that the post office did not provide any notification until December 7 is a pretty long shot. It seems notice was there and it seems unusual that if one has business interests in a city and one received a certified letter that was sent from the city government it would be opened soon. Unless there is some other reason that you wouldn't want to open it, it would be opened. The current regulations have been followed. Nothing is gained by tabling, it can all be heard again and other options will send it back to the Plan Commission to start all over again.

Service said the transition argument is heard a lot and there isn't a lot of merit in it. This block has been very stable, it has been well maintained, and there is no reason to believe that it could not retain its residential character long after the current residents are gone. It is a convenient residential area and there is a public interest in the issue.

White said there is the Board of Zoning Appeals as an option for the petitioner.

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

It was moved and seconded that Ordinance 90-2 be introduced ORD. 90-2 and read by title only. Clerk Williams read the ordinance title. It was moved and seconded that Ordinance 90-2 be adopted. The synopsis was read and the committee recommendation of Do-Pass 6-0-1 was given.

Mueller described the tract. It is currently single family and the petitioner's plumbing business is in an out building. The petitioner wishes to convert the outbuilding to a multifamily residential structure. There are 17 eventual single family lots that would be in excess of the current RS minimum lot size thus the PUD request. There were no particular problems with the request and it conforms to the surrounding area. Some conditions of approval were reservation of specific decision on entrance improvements, accel and decel lanes as shown on the tract map, a decision on whether the Rhorer Road sidewalk should go and in Sherwood Estates a trade was made regarding sidewalks. Rhorer Rd sidewalk was traded to connect with Sherwood Oaks and that could happen here and so we would like to defer that decision.

Mueller said the potential exists to utilize internal sidewalks, however those are privately owned and something has to be worked out and this is not quite the time to do so.

That would happen at development plan approval.

Fernandez said that the tree line would be preserved. He said the condo unit issue came up at the Plan Commission meeting and it was seen as no major problem. Kiesling said we need to carefully consider deferring sidewalks e.g Rhorer

Rd. because more and more development is beginning to take place on Rhorer Rd.

The ordinance received a roll call vote of Ayes:8, Nays:0. ORD. 90-3

It was moved and seconded that Ordinance 90-3 be introduced and read by title only. Clerk Williams read the ordinance title. It was moved and seconded that Ordinance 90-3 be adopted. The synopsis was given and the Do-Pass recommendation of 7-0.

Doris Sims said this ordinance corrects a clerical error and a reclassification for a supervisory position.

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

There was no legislation for first reading. FIRST READING

Hogan urged councilmembers and citizens to concern themselves with our local school board issues and get involved. We are actively involved in a master plan process and all of this should be considered when we talk about school redistricting issues.

The next meeting will be on February 7, 1990.

The meeting was adjourned at 10:00 P.M. ADJOURNMENT

APPROVE: *Iris Kiesling*
Iris Kiesling, President
Bloomington Common Council

ATTEST: *Patricia Williams*
Patricia Williams
Clerk, City of Bloomington.