

In the Council Chambers of the Municipal Building held on Wednesday, October 3, 1990, at 7:30 P.M. with Council President Kiesling presiding over a Regular Session of the Common Council.

COMMON COUNCIL
REGULAR SESSION
OCTOBER 3, 1990

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

ROLL CALL

Kiesling gave the agenda summation.

AGENDA SUMMATION

The minutes of September 19, 1990 were approved by a voice vote.

APPROVAL OF
MINUTES

Foley reported that the area surrounding West 3rd Street and the By-Pass is worsening, in fact it is unsafe. He states that he has been in contact with state officials and representatives and the detours and congestion are creating real hazards.

MESSAGES FROM
COUNCILMEMBERS

Olcott expressed relief that the Hillside and High St. project is almost completed and consoled Foley that, that too, seemed to take forever to finally be corrected.

White announced that next week is Fire Prevention Week and that the Bloomington Township Fire Department is dedicating a new truck on Saturday, October 6th at 4:00 P.M.

Service reminded everyone of the ongoing community congresses and urged the public to attend. She also thanked the Bloomington Fire Department for the quick containment of a fire on E. 6th Street that recently occurred.

Hogan announced that this was the last week to register for the upcoming November 6th election and both he and Pat Williams, the Clerk, urged people to participate in the process.

Kiesling thanked everyone who has participated in the community congresses so far.

Tim Mueller approached the Council seeking advice regarding a recent PCD rezoning request at S.R.37 and Tapp Rd. In an earlier decision the Plan Commission approved the development phase for COTA offices in that complex. The plans were presented by Jeff Fanyo and there was a discussion of the scope of activities planned for the site. It was determined at a later time that fundraising activities such as Bingo were part of the plan. Mueller asked the Council for input regarding the advisability of sending this new information and space need/usage to the Board of Zoning Appeals rather than back to the Plan Commission and then the Common Council. He was not asking for a decision from the Council, and said that he would forward additional information to them but simply wanted them to be aware of this option or possibility.

MESSAGES FROM
DEPARTMENTS

Chief Sharp introduced a Charles Gwinn (sp?) who will be conducting a sensitivity seminar for law enforcement officers.

Mike Davis reported that the Big Ten Mayors meeting would take place here in Bloomington on October 4 from 10:30 A.M. to 3:00 P.M. and invited anyone who wished to attend. He also warned everyone that the United Way drive begins again and we are hoping to increase our contribution to even greater amounts. He also reminded the Council that the city/county ambulance agreement expires December 31 of this year and meetings are ongoing regarding this issue.

MESSAGE FROM
THE MAYOR

It was moved and seconded that Resolution 90-29 be introduced and read by title only. Clerk Williams read the resolution by title only.

LEGISLATION FOR
SECOND READING
RES. 90-29

It was moved and seconded that Resolution 90-29 be adopted. The synopsis and committee recommendation of

Do-Pass 9-0 was given.

Glenda Morrison reviewed the amendment to the resolution dealing with the point that the property be redeveloped for the sole use as a hotel. This simply makes the resolution more specific and defines what the property will be used for exactly.

The amendment received a roll call vote of Ayes:9, Nays:0.

Service thanked everyone for exempting the house on Smith and College from this proposal. Olcott still expressed concern that there is insufficient parking space for Mr. Elmore's hotel and that 2 years down the line the city is not going to have to redo their whole operation for parking because the hotel needs more space. Mr. Elmore said that the city is in this for the long haul and at this point in time there are no assurances that 2 years down the road there won't be a change of mind, but the Elmores do not foresee that happening. Olcott also asked if Elmore was deeply enough involved in the planning of the conference center that this is going to be a "quality enough situation" that the hotel will fit in. Olcott was concerned that the hotel would be twice as good as our conference center. He also hoped that wasn't true. Elmore expressed confidence in the process that has operated so far and the people that have interacted in order to bring the whole project to this state.

Morrison said that the next step is to know how much tax increment financing there is going to be in order to talk about what kind of bond we can do. Morrison said she "thinks" we will be close to the amount we need to be able to sell a 1.5 million dollar bond. She is waiting for final assessment figures from Margaret Cook, the county Auditor. Fernandez said that we need to know from what pool of money the city's commitment to this parking lot will come from.

The resolution, as amended, received a roll call vote of Ayes:9, Nays:0.

It was moved and seconded that Ordinance 90-45 be introduced and read by title only. Clerk Williams read the ordinance by title. ORD. 90-45
It was moved and seconded that Ordinance 90-45 be adopted. The synopsis and committee recommendation of Do-Pass 9-0 was given.

Chuck Ruckman said that this is simply a transfer of account balances within the department before the end of the year.

The ordinance received a roll call vote of Ayes:9, Nays:0.

It was moved and seconded that Resolution 90-28 be introduced and read by title only by the Clerk. Clerk Williams read the resolution by title. RES. 90-28
It was moved and seconded that Resolution 90-28 be adopted. The synopsis and committee recommendation of Do-Pass 3-3-3 was given.

Kathy Saunders explained the maps and areas under discussion this evening. Where the city limit is, where the two mile fringe is as well as the three mile fringe boundary is. Using a map provided by S.K. Wilson the arcs determining the boundaries were confirmed by the Asst. City Engineer. There were some differences between the S.K. Wilson "line" and the Asst. City Engineer's boundary. The main point is that Ellettsville needs this consent in order to proceed

with the first phase rather than later annexation phases as originally thought.

Herb Ray, Ellettsville Town Council President, introduced Phyllis Pooler, an associate of S.K. Wilson, and she said that when they did the "arcs" on the map, they simply thought that the City boundaries went "up a little further." A past de-annexation changed our border to the south and an annexation on our west border changed the arcs.

Tim Mueller explained the maps stating that the two mile fringe line, adopted and recorded, stays fixed no matter how much the city grows and the fixed two mile fringe line actually touches city boundaries in some areas. In other words, we have annexed right up to the two mile fringe boundary in some area. The proposed annexation areas under discussion tonight is approximately 1/2 mile beyond the two mile fringe. The nearest corporate limits is east of the bypass on Curry Pike. In terms of our own future plans for annexation potential, he doubted very much that we will be targeting anything along this road to Ellettsville in the foreseeable future. Right now the nearest point that has services is the Ivy Tech site and BHS North High School. One exception to this in the general area, is if the state reroutes Highway 46 as part of its project and brings it in at the 45/46 ByPass which is currently what the preliminary routing studies are saying and it's quite possible that that could generate some economic development of some sort at or near that intersection but that is a good couple of miles, as the crow flies, from what we are talking about. Mueller said, "We looked at this and in all honesty we really can't think of any reason why the city would be concerned about what is going on here." Saunders clarified a point that the three mile limit is based on the corporate boundaries at this time. Phyllis Pooler pointed out the Spring Valley area on the map that is already annexed to Ellettsville and the town is trying to bring its corporate limits together and annex the territory in the middle.

Jim Richard asked the Council to deny the petition and also thanked the Council for the earlier placement on the agenda this evening. He raised numerous points made at last week's committee meeting by Councilmembers and Kathy Saunders, Council Attorney, namely questions pertaining to what we as the Common Council are doing involved in this procedure. He read a letter from State Rep. Jerry Bales urging the Council to proceed with caution and care regarding this resolution and releasing any of this property within the three mile limit. Mr. Richard went on to discuss the letter from Bales and the intent of the legislature when the legislation was passed in 1973. Richard talked about the major industries on the west side and the area to the north is light industrial factories and the city has sewer service in this 2000 block of N. Curry Pk. Forrest Park Farms is 7 city blocks away from the two mile fringe boundary. Regarding the question of highway placement (referencing Tim Mueller), it's a 1993 project for 28 million dollars and next spring the state will hold hearings to determine that route, and it's very likely going to be in this very corridor. Wherever this highway goes it will be an area of economic development. Richard also discussed the lack of planning staff. There is a citizen board but no professional staff. He cited a recent voluntary annexation request before the Town Board and discovered the property owner of the tract had applied for a county building permit and was denied because the building plan did not meet code requirements for Monroe County. He asked to be voluntarily annexed into Ellettsville and it was approved and a building permit

was issued that same day. He questioned the validity of a 1973 annexation and if the Bloomington Council gave their consent to the Spring Valley request. (None was found). He urged the Council to consider this in the light of the city's long range interests and our ability to grow.

Jim Chrenna, Ellettsville Councilmember and President of the Plan Commission, said that Jeff Fanyo is employed by Ellettsville to help update a lot of their zoning ordinances. It has been a practice to annex property and with an agreement from the county to issue a building permit, if the annexation is voluntary with no anticipated remonstrance. Traffic will be the same whether it's called Ellettsville or something else.

Steven Coopersmith, a Forrest Park resident, questioned the validity of the Ellettsville Plan Commission. He discussed Smith Pike and the major development that might take place if the highway goes through that area, as well as the projected growth plans for the west side industries that will necessitate the widening of Smith Pk. He asked the Council to consider carefully the consequences if they relinquish the rights to this area and the compassion factor based on the lack of guidance within the Indiana Code.

He urged the Council to "let this ride" until the master plan process is completed.

John Shean was also opposed to the resolution and expressed concern about the 1973 annexation that was done without Common Council approval. Some debate followed about corporate boundaries in 1973 and the fact that no record seems to exist of any request for approval by the Council.

Tim Mueller said we are not too familiar with the 3 mile limit. It has cropped up for the first time in the course of this request. Mueller iterated the basic conditions for annexations (for us, that is). He pointed out that laws can change rather rapidly and under the present circumstances it is disadvantageous to annex vacant land. We have a levy limit and when we annex land we assume costs of service and we can get a levy increase based on an annexation but the levy increase is proportional to the valuation of the annexed area. That means if we annex raw land we don't get much of a levy increase and when the land develops we incur service costs, so under the present statutes we try to avoid annexation of vacant land.

Fernandez asked when the in-lieu of annexation agreements with the west side industries run out. Olcott said it was in 1979 for 15 years. The most recent one was in 1987, also for 15 years. Mueller said we are giving a consent to only the mapped areas. We have indicated that we doubted that the colored areas of the map held any interest for the City for the future, however the intervening areas up to our two mile could be of some interest because we are seeing some development on Curry Pk.

Olcott said he will support the resolution but his problem is it just isn't our problem.

Steve Hogan said that we should annex all the property that is contiguous and even more than we have done because we should share the tax base. He stated he felt a responsibility to look out for Bloomington's interest and that interest is when we "can get your tax dollars, when you can be part of Bloomington. So it isn't whether or not you are annexed, but who gets there first." Maybe in 10 or 15 years we can latch onto that tax revenue and that is basically what we are talking about. He also expressed frustration that the

3 mile "thing" puts us into this kind of situation, this many years before it's really a situation.

Olcott asked if Ellettsville has a legal avenue to overturn the Council's vote if it doesn't pass tonight. Phyllis Pooler said there is no statutory avenue to move forward.

Regester asked how the intended annexation area compared in size to the entire corporate area of Ellettsville. Ms. Pooler said a survey is being prepared and it is roughly about a fourth the size of Ellettsville.

Jim Richard commented on the past handling of S.R. 46 traffic problems and they will just be increased.

Jim Chrenna pointed out that S.R.46 is a state road and permission for cuts is granted by the state, not the town of Ellettsville and the state has issued over 100 cut permits between Bloomington and Ellettsville.

Mr. Ray said that Ellettsville provided Forrest Park Farms with water, sewage treatment, fire protection and also police cars cruise the area occasionally (Crowd protested that statement).

A man who did not identify himself said that a police officer lives in the area and comes and goes each day. Yes, there are sewers and they put them in themselves. In 1960 there was no sewer or water, and the city of Ellettsville also did not have sewer or water and 300 residents formed a corporation and put a high pressure line in and bought the water from Bloomington. He pointed out that they still have their own water corporation, put the lines in and built the sewer plant.

Kiesling asked Saunders if the 1973 annexation would make a problem for us. The corporate limits would have to be determined for 1973 but it would not have anything to do with this resolution at this time.

Service said she would vote against this because the arguments against annexation are similar to ones we always hear, however there is more to the question than simply who is going to get your tax dollars. The rationale of the whole 2 mile fringe area is so that as we expand the areas adjacent to the parts that are within the city have planning and zoning that is compatible with the city. Ellettsville cannot be blamed for not having a large planning department and the fact that Mr. Fanyo operates as a consultant is not quite equivalent to a professional staff. Mr. Fanyo frequently represents developers before the Bloomington Common Council and if it is the consultant point of view that is being used in Ellettsville planning is isn't as balanced as the city might like to see some areas treated. The proposed rerouting of S.R. 46 is not developed and there are reasons to have the city's attitude prevail over that development over some other attitudes because of sensitive environmental or historic areas.

Foley said he would vote against the resolution because we don't know what the future holds and the whole 2 mile fringe area is taxation without representation and in this case it is annexation without representation and the residents of the area are placed in la-la land. with no specificity in statutes and yet it affects the future of Bloomington and Ellettsville.

Rogette Hector, Clerk-Treasurer of Ellettsville and Secretary of the Planning Board said that Ellettsville's planning is being maligned. Historically in 1980 they were flat broke and services

had to be curtailed, people were laid off and there was no way of keeping a planning dept. going. For the last 10 years there has been progress and the town is very solvent and has one of the best street departments in the state. Hector said the town has a computerized mapping system and it is almost ready for printing and distribution. The problems with S.R.46 existed long before any part of it was in the town of Ellettsville and it was zoned commercial by an earlier county decision. She said they were concerned about property owners being happy with what is happening and that they want good growth in the area. The area under discussion is a consent area and that does not mean Ellettsville is going to annex all four phases, the first two definitely and phase three. Phase four is down the line, with public hearings, but it is not scheduled to be annexed at this point. Ellettsville will probably never ask for the area between Forrest Park Farms and the industries and the city of Bloomington will have control over and can say no annexation in that area.

John Fleener said he did not see the urgency of the issue and there is enough going on in the future and to make the decision tonight is unnecessary.

Fernandez wished we could work in concert with Ellettsville officials and there is a real misconception about the profitability of annexation because of levy freezes. His three concerns are doubts about the state plan for the highway and wherever it is will be a major development area, our own city master plan that we are in the process of moving forward and our goal statement of trying to encourage more development on the west and north west sides of town, and lastly future administrations may have a very different philosophy about annexation and want to move more quickly toward the west side industries. He stated that his vote was not a judgment on the quality of services provided by the town of Ellettsville nor is it a legitimate concern for this Council.

White said that if we don't have plans for this area then we should be comfortable about going ahead and approving the resolution. Today the town of Ellettsville is trying to offer them more services and we are not in any position until well into the 2000 year and it is best that people in this area decide whether or not they want Ellettsville to serve them. If a remonstrance occurs and it is successful then the area will still be open for us to serve them later on. He thought Ellettsville should have a shot at it and if it doesn't work, we'll be back in the ball park.

The resolution received a roll call vote of Ayes:3, (Olcott, Kiesling, White), Nays: 6. The resolution was denied.

It was moved and seconded that Ordinance 90-42 be introduced and read by title only. Clerk Williams read the ordinance by title. ORD. 90-42

It was moved and seconded that Ordinance 90-42 be adopted. The synopsis and committee recommendation of Do-Pass 5-4 was given.

Kathy Saunders gave a general overview of the ordinance stating that this ordinance would be put into the Code under bicycles and the title will be amended as well to include all foot propelled vehicles. Then it outlines various streets and alleys on which skateboarding will be prohibited and the map indicates the areas. The city has the discretion to post signs. Part of the amendment would delete section (d) of the ordinance referring to a section that would have been in the ordinance if lots and garages had gone through. The

last section has to do with violations and a Class E infraction which is a \$3.00 fine. The police department would have the authority to seize and hold the board until either the fine was paid or a court order released it or the police dept. released it upon a promise to appear. If the skater was a minor then a parent or legal guardian would also have to appear. Saunders displayed an overhead depicting the various areas in which problems have occurred.

Olcott said we are not outlawing skateboards on the streets, we are basically giving ourselves control of the people who are pedestrians. People who skate to class are not going to have their boards taken away. This ordinance gives the police the teeth they need to operate much the way the parks board makes regulations so that they can be enforced if necessary or needed.

Frank Ragan talked at length about skateboarding and said that a meeting took place in the parking lot about half an hour ago and it was a good exchange. There has been a sense of frustration about the park and things not happening as fast as they would like and that frustration is also felt by the department as well. This park is just a start and Ragan has always felt that the Council would support additional funding if the need could be justified and if the experiment was successful. It has been difficult to keep the ramps as functional as we would like them to be. A restroom is desperately needed and it is not an easy solution because we cannot tap into sewer at that site and the closest line is in the alley and it is encased in concrete. He pledged to the group that there would be a restroom by next operating season and we need to figure out a way to keep a skateboard ramp functional and safe. The advisory committee will reconvene and work together to get communication going again. He praised Paula McDevitt for her efforts to make this situation better. He said he would not take a position on this ordinance. If it does go into effect, he thought it would be appropriate for some of the downtown businesses to donate money to help create a park that has better aesthetics and facilities. Government cannot do everything.

Dave Tate said that he appreciated the support of councilmembers Hogan, White and Fernandez, and he thought the ordinance was too complicated and the amendment is better than the ordinance. He urged the Council to vote against this ordinance. Jeff Patch said he took an informal survey of 30 businesses and about 60% had no problem with skaters disturbing their businesses. He suggested that it might be helpful if a few skaters were nabbed for trespassing when they are skating illegally or certain areas can be made "unskatable" for example with a few curb posts.

Talisha Coppock, with the Commission for Bloomington Downtown, said that she personally has not had that many complaints about skaters. Her poll shows that businesses are concerned about the two speeds on a sidewalk and that is a problem for pedestrians. Some businesses have expressed concern about banking against the windows and glass breaking and someone getting hurt. We need to share and understand pedestrian concerns as well as skater concerns. The parking lot situation must be addressed.

Jackie Burns, a downtown merchant, said we need to worry about the kids who are not good skaters and the customers who are at risk if a skater does not have good control.

Fernandez moved that the language dealing with garages

and lots be removed and that the map be reduced to deal mainly with Kirkwood from Indiana to College, 6th Street from Walnut to College, Walnut from 3rd to 7th and College Avenue from 3rd to 7th Streets. Olcott seconded the motion.

Register asked about the garage and lots. Kathy Saunders said that risk management wants to revise the cruising ordinance to take out references to cruising and congregating and to prohibit skateboarding and cycling in lots and garages.

Kathy suggested that this be deleted and when the other ordinance comes before the Council this can be added, but it doesn't make any sense to have this in now when there isn't any reference to Sec. 15.40.070.

White supported the amendment noting that it pertains to the areas with the greatest concerns rather than streets with fewer pedestrians. He thought the area around the post office also posed particular concerns with the heavy pedestrian traffic and it should be carefully watched.

Steve Hogan also thought the amendment was a good compromise and asked that we consider NOT posting signs. "We have plenty of signs everywhere and signs every 20 ft. seems awful" He hoped the skaters would be responsible and try to honor the intent of the ordinance.

Saunders said that signage or some type of notice would be wise. Hogan suggested a map at the skate park. Olcott said this ordinance, like so many, responds to complaints. If kids are skating down Kirkwood to the park, the police or business people are not going to object. This is a "complaint" ordinance and if there are complaints people will pay for it for awhile.

Hogan said that if anyone is destroying property, then we should do our best to make an example of it and stop it. Don't defend people who are maliciously destroying property.

Grady Brown, the parent of a skater objected to the confiscation of the boards. He thought that was heavy handed. We don't confiscate cars or bicycles. Bill Land also objected to the confiscation part of the ordinance. He asked that it be withdrawn from the ordinance. He suggested that the young people come up with their own maps as a way of becoming responsibly involved in the process. He hoped that the upcoming master plan would address facilities for our young people.

Shiama Kasha (sp) said that skaters are just as courteous as pedestrians and cyclists.

The amendment received a roll call vote of Ayes:9, Nays:0.

Fernandez hoped that the master plan would address the issue of more appropriate spaces for bikes and skaters. Kirkwood is just too wide to be devoted to cars only. The real issue is damage to private property. We shouldn't adopt an ordinance if we don't intend to enforce it, particularly in this case. We need to try to eliminate the conflict between pedestrians and skaters.

Service thought we had greater problems with irresponsible drivers and cyclists, but we don't ban those activities. We should be working toward a less divisive solution.

Service moved that the confiscation section (d) of the ordinance be deleted with the exception of the first sentence dealing with fines. The motion was seconded. Steve Sharp said that the purpose of the confiscation part is to involve the parents so that they know and

understand what their kids are doing and there was never any intention to jail these kids.

The amendment received a roll call vote of Ayes:9, Nays:0.

The ordinance, as amended, received a roll call vote of Ayes:6, Nays:3 (Foley, Fernandez, Service). (Congratulations for making it this far!)

It was moved and seconded that the following ordinances be introduced and read by title only by the Clerk for first reading. Clerk Williams read the ordinances by title.

Ordinance 90-47 To Amend the Zoning Maps from RE to RS and Designate PUD re: Property Located at the SE Corner of Bayles Rdd and Kinser Pk. (Russell and Ann Carpenter, Petitioners).

Ordinance 90-46 To Amend the Zoning Maps from RS to RL and Designate PUD re: Property Located in the 1800 block of S. Covey Lane (Tim Henke, Petitioner).

There were no petitions or communications from the public.

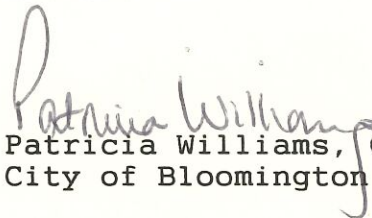
The meeting was adjourned at 11:10 P.M.

APPROVE:



Iris Kiesling, PRESIDENT
Bloomington Common Council

ATTEST:



Patricia Williams, CLERK
City of Bloomington