

In the Common Council Chambers on October 12, at 7:30 p.m., a Special Session of the Common Council was held with Councilpresident Pro-tem Richardson presiding.

SPECIAL SESSION  
COMMON COUNCIL  
OCTOBER 12, 1977

Councilpresident Pro-tem Richardson began the meeting at 7:35 p.m. There were approximately thirty persons present.

Councilmembers Present: Richardson, Olcott, Young, Allison, Morrison. Absent: Middleton, Towell, Blume and Kinzer.

ROLL CALL

There were no messages from Councilmembers.

MESSAGES FROM  
COUNCILMEMBERS

Councilmember Richardson introduced the Mayor's appointees to the Housing Quality Appeals Board, Judy Waltz and Marc Diamond. (Resumes distributed earlier).

CONSIDERATION OF  
MAYOR'S APPOINT-  
MENTS TO H.Q.A.B.

Councilmember Olcott asked Ms. Waltz how long she plans on staying in Bloomington. She answered at least two years, four years if she is admitted to law school. In answer to a question by Councilmember Morrison regarding how flexible she would be on the Board, she said she would not be flexible in making sure that housing units are habitable. She said she felt the housing code is fairly lenient. Councilmember Morrison disagreed, stating that Bloomington has a "major" housing code. Councilmember Richardson said he agreed the code was lenient, and noted that several City Engineers have also expressed this opinion.

Councilmember Morrison asked if she had any technical knowledge in the field. She answered that if such expertise was needed, there are people on the HQAB that could deal with this area. She said she felt most violations could be spotted without such technical knowledge.

Councilmember Young asked her about her feelings on units that may be in violation of new housing code requirements, where they had not been in the past. He noted that smoke detectors are now required, wiring specifications have been tightened, etc.

She replied that it depends on the individual case. If a violation puts people in immediate danger, the violation should be corrected immediately. Installing a smoke detector, she said, is not undue hardship. She said she feels housing inspections are a very important program in the City, and continued that she would work diligently to accomplish as much as possible.

Marc Diamond then addressed the Council. He explained that he has lived in Bloomington for seven years. He is now employed full-time at Indiana University, and will remain there as long as they will have him. He said he had attended a HQAB meeting last week thinking that his appointment was effective since he did not know Council approval was required. He contended that he was the only person there that had prepared for the meeting by reading the background information. He would like to see the HQAB pay more attention to details of cases before them. He continued that he would give landlords a certain amount of leeway in that if they make a good faith effort, and correct 30 out of 35 violations, he would take this effort into consideration. He said the needs of the tenants also need to be carefully considered.

Councilmember Young moved and Councilmember Allison seconded a motion to recommend approval of the Mayor's appointments to the HQAB. Motion carried by a vote of Ayes: 3, Nays: 1 (Olcott), Abstentions: 1 (Morrison).

Councilmember Olcott moved and Councilmember Morrison seconded a motion to introduce and read Ordinance 77-88 by title only.

ORDINANCE 77-88  
To Amend Ord. 77-76  
re: Water Rates

Deputy Clerk Connors read Ordinance 77-88 by title only. Councilmember Richardson read the legislative synopsis.

Councilmember Olcott moved and Councilmember Morrison seconded a motion to suspend rules to give Ordinance 77-88 second reading. Motion carried by unanimous voice vote.

Councilmember Olcott moved and Councilmember Morrison seconded a motion to adopt Ordinance 77-88.

Frances Komoroske, Council Administrator/Attorney, explained to the Council that David Rogers had recommended that Ordinance 77-76 be repealed and re-enacted, since there may be problems with revoting on an ordinance that has already been passed and signed. She continued that the contents of Ordinance 77-88 are identical to Ordinance 77-76 except for the title and first sentence of Section I.

James Cotner, Attorney for the rural water companies, spoke to the Council. He reminded them that there are two areas in which the ordinance may be investigated or "attacked". First, fairness and reasonableness, which can be very flexible, and legality, which is not. He contended that the franchise agreement, which is tied to the water rates ordinance, is illegal. This fee is paid by Utilities in lieu of taxes. He said state statutes provide that City-owned utilities may count as part of their fees that amount that would be paid by private utilities to the City and school corporation. However, he claimed that the State Board of Accounts, in their audit dated September 29, 1977, contend that Utilities may only pay salaries to those employees who perform services in connection with the operation of the utility, and most importantly "this law contemplates that payment of funds in lieu of taxes be made to the city and not in the form of salaries and wages of persons who perform limited or no services to the utility, and also that the school city (Monroe County Community School Corporation) participate in the distribution of such taxes", which he claims the City is not doing. He continued that these points were made to the Utilities Director and USB President in letter form (see attachment), but they obviously have not informed the Council of this. He said the City cannot ignore the State Board of Accounts (he noted that he had done so when he was City Attorney, and ended up in court, so he would not like to see the USB doing the same thing). He said the Council may not want to believe him, but they now have heard from the State Board of Accounts, whom they must be accountable to. He said if the Council enacts Ordinance 77-88, their request for increased water rates will be denied by the Public Service Commission. This would only set the Council back six to eight months, and would be of little benefit to anyone. He also noted that it is clearly illegal to pay salaries out of wastewater funds; salaries must be paid from water funds. In regards to the increases for rural water companies, he said that it seems that the further you get from political impact, the greater the rate increase. (He noted that residential increases are 20%, I.U. 77%, and outside of the City, 105%). He said there has been great concern on the part of the Council for the "little people". His clients serve 5,000 "little people, widows, children, old people, most of whom are low income". He asserted that the City has claimed that the large increase for his clients was due to "cost of service." In the first cost of service study done by Black & Veatch in 1966, B&V swore that 35¢ was the cost should be for rural water companies for 1,000 gallons of water. In 1977, the cost has increased by 105%. He said that either costs or allocation of costs were not passed on before, or a greater part of allocations are being attributed to rural water companies. He added that the cost of the electricity needed to pump the water is the same for his clients as it is for City residents.

He told the Council that they, along with the USB, decide what will be submitted to the Public Service Commission. If the ordinance is illegal, they will not be able to place all blame on the USB. He said the Council now has evidence that the franchise agreement, which is part of the basis for Ordinance 77-88, is illegal, so he recommended that the Council return the Ordinance to the USB so that they may comply with the State Board of Accounts' report, or explain why they need not.

Councilmember Olcott questioned why the State Board of Accounts would not inform the Council if they were taking illegal actions. Mr. Cotner replied that they sent the audit to the Utility Department and USB, not to the Council.

Art Knollman said he has not gone through the report, which was received last week, in detail. He has read it, but has not received any legal advice from their counsel.

Councilmember Olcott moved and Councilmember Morrison seconded a motion to table Ordinance 77-88 until the October 6 Council meeting.

Councilmember Morrison said that he had asked the State Board of Accounts about the franchise arrangement, and they have said that they were skeptical of the franchise, but they did not say it was illegal.

William Milne of the Utilities Service Board explained that he had heard previously that the franchise may be illegal; however, no one has said that it is illegal. He said as a Board member, he is against the franchise agreement, and the USB is currently addressing the problem by looking for alternate methods of payment for 1979. He concluded by adding that Mr. Cotner had ignored the fact that there has been incredibly high inflation from 1966 to 1977, and this is reflected in increased costs to rural water companies. He said the USB would have Mr. Rogers at the next meeting to speak to this.

Frances Komoroske, after examining Mr. Cotner's copy of the auditor's report, contended that there is nothing in the report that states that the franchise agreement is illegal. The report states that the law contemplates that salaries not be paid in such a manner. The State Board of Accounts does not like the situation, and would like to have the USB change it next year.

Mr. Cotner remarked that the State Board of Accounts does not come right out and say something is illegal; they are not attorneys.

Councilmember Richardson said that the State Board of Accounts has approved the civil city budget, which includes payments from the utilities in the form of the franchise agreement. They are aware of the situation, but have passed the civil city budget in spite of this.

Councilpresident Middleton told Mr. Cotner that he has not explained to the Council his specific reasons for opposing the 72¢ per 1,000 gallons costs. He said unless he can show the Council that it costs less to produce the water than 72¢, he is spinning his wheels.

Mr. Cotner replied that a study to determine that costs \$30,000, which his clients cannot afford. He repeated that his question is, why have our costs increased more than anyone else. Is the cost of service more?

Councilpresident Middleton said that Black & Veatch has studied the matter and recommends 72¢. He pointed out that costs have at least doubled since 1966. The sale price of water from the state to the utilities has increased drastically. This accounts for 105% increase.

Councilmember Richardson said that one rural water company had informed him that Black and Veatch had actually recommended 65¢ per 1,000 gallons for rural water companies, but since the highest rate in the state was 35¢ per 1,000, they decided they could only get 35¢ for rural water rates even though the actual cost of producing the water was much higher. He said that if this is true, the increase is not unreasonable.

Mr. Cotner retorted that the 35¢ figure in 1966 reflected actual cost. Black and Veatch prepared a report similar to the one prepared this year which reflected this.

Councilmember Young told Mr. Cotner that the City has to face greatly increased costs from 1966 to 1977. For one thing, the E.P.A. has a multitude of regulations that must be followed which take a great deal of staff time, and at times require change in operating procedures that can be very costly. He added that he does not think the USB runs the utilities as well as the Board of Works had in earlier years.

Art Knollman commented that he does not know about the way the 1966 analysis was done. They are basing their rates on the new cost of service analysis.

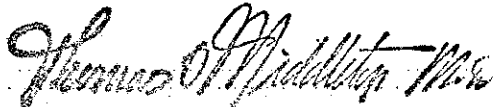
Councilpresident Middleton asked that Mr. Dave Rogers and Mr. Cotner prepare reports or briefs to present to the Council before their meeting on October 20th.

Councilmember Olcott moved and Councilmember Morrison seconded a motion to adjourn. Meeting adjourned at 8:30 p.m.

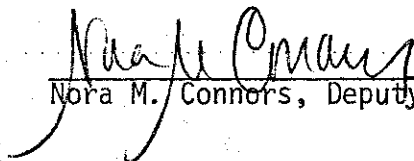
ADJOURNMENT

APPROVE:

ATTEST:



Thomas O Middleton, President  
Bloomington Common Council



Nora M. Connors, Deputy City Clerk

MINUTES approved this 20 day of October, 1977.