

In the Common Council Chambers, held on April 22, 1976 at 5:30 p.m., with Councilpresident Blume presiding.

REGULAR SESSION
COMMON COUNCIL

Roll Call: Present: Councilmembers Blume, Kinzer, Middleton, Morrison, Olcott, Richardson, De St. Croix, Towell. Absent: Councilmember Young.

ROLL CALL

City Officials Present: Pat Gross, City Controller; Michael Corbett, Mayoral Aide, Steve Richardson, City Attorney; Debbie Mantell, Mayoral Aide, Tom Crossman, Head, Planning; Leo Burke, Director, Human Resources Department.

CITY OFFICIALS
PRESENT

Councilpresident Blume then gave the agenda summation. He noted that Councilmember Young's absence is due to his spraining his ankle. At First Reading, Appropriation Ordinance 76-19, to Appropriate Funds from Federal Revenue Sharing to the Department of Human Resources and Parks and Recreation Department; Ordinance 76-21, to Amend Zoning Maps regarding SW corner of Hickory Leaf & SR 45, Ordinance 76-23 to Amend Zoning Maps regarding 2430 Vernal Pike; Ordinance 76-24, Amendment to the Human Rights Ordinance; Ordinance 76-25, Amendment to the Animal Control Ordinance; Ordinance 76-26, Salary Ordinance for Department of Human Resources. At Second Reading, Ordinance 76-19, to Amend Zoning Maps regarding SW 17th Street between Maple & Jackson. Under Reports from City Boards and Commissions, the annual report from the City Attorney's Office. Also, the minutes of March 4, March 16, and April 1, 1976.

AGENDA SUMMATION

Councilpresident Blume asked for Messages from the Mayor. Receiving none, Councilmember De St. Croix asked if the agenda would be amended by the Mayor's Office to include first reading of Appropriation Ordinance 76-10, to appropriate funds from the Cumulative Capital Fund for the Old Library renovation.

Debbie Mantell answered that she understood the motion to amend the agenda would come from Councilmember Kinzer.

Councilmember Kinzer said she thought the Ordinance would not be introduced until the rationale and plan for the Library was submitted. She added that she is willing to hear discussion as to why the Ordinance should be given first reading tonight.

Debbie Mantell explained that the Mayor's Office would submit on 23 April an Ordinance to create a Carnegie Library Use Authority, which would go into effect at about the same time as the appropriation ordinance. She asked that the ordinance be given first reading tonight so that they could get it through as soon as possible.

Councilmember Kinzer inquired as to how long it would take to renovate the Old Library.

Debbie Mantell responded that the City Engineer, Norman Perry, had told her that the renovation on the downstairs should be completed by November or December. She added that the figures were not final.

Councilmember Olcott remarked that once we spend \$121,000, then there's no way we can go back and say we flushed it down the drain, and I've heard \$250,000 still wouldn't get the job done.

Councilmember De St. Croix noted that in order to amend the agenda, it takes a two thirds vote by the Council.

Councilmember Towell retorted that he thought that was wrong, and that the proper procedure would be to have a majority of the Council vote to put the ordinance on the agenda.

There was then general discussion about the correct procedure for amending the agenda to include Appropriation Ordinance 76-10.

Councilmember Kinzer moved and Councilmember De St. Croix seconded a motion to suspend the rules so that first reading could be given to Appropriation Ordinance 76-10.

Councilmember De St. Croix added that if the figures are not correct, and need to be revised, it only requires that the ordinance be amended in second reading.

Councilmember Kinzer noted that on April 23, an ordinance will be submitted to spell out the use of the Old Library and create the Carnegie Library Use Authority. She said unless there is some emergency in terms of getting the appropriation ordinance into the works, it would be better to consider both parts at the same time, since one depends on the other.

Councilmember De St. Croix then withdrew his second of the motion to suspend rules.

Councilmember Towell said that he would advise extreme tolerance in putting things before the Council and extreme scrutiny when they come up for a vote. He added that he saw no point in not putting it on the agenda.

Councilpresident Blume acknowledged that Appropriation Ordinance 76-10 is off the agenda due to a lack of a second. He then asked for Messages from Councilmembers.

Councilmember Towell said there have been negotiations regarding the contents of a resolution indicating what matters need to be approved and by what manner by the Council. He said he was given a strong vote of confidence by the Council on specifications and told to defend our rights. He said he thought he had done that and had also tried to be reasonable about a working situation where what needs to be done is done. He said the resolution has been typed up and the next step will be to go to a committee of the Council and then bringing it before the Council. He then solicited comments regarding the resolution from Councilmembers. He said he thought the Council was within its rights by state law to enact an ordinance, added that the Council can go ahead with the resolution even if there is not support from the Utilities Service Board or something stronger can be done if the agreement breaks down. He said he hoped that the resolution could be supported by Flo Davis of the Utilities Service Board and then they could all come to a consensus and a working agreement. He said if that doesn't work, the Council can go on from there, adding that this has been the most bitter, tiring fight that the Council has been engaged in, noting that that is ridiculous when the state law says it can be done.

MESSAGES FROM
COUNCILMEMBERS

Councilmember Kinzer said Councilmember Towell should be congratulated for his hard work on the resolution. She added that the resolution should come up for discussion at the Utilities/Public Facilities committee meeting on Thursday, April 29. On the Old Library, she said a meeting was held with representatives from the Mayor's Office and the Council, along with the City Attorney and members of the Historical Preservation Society to try to work out something where the Old Library could

be preserved and at the same time, the city would not be spending an inappropriate amount of money on it. An informal agreement was reached that will be heard about in a few weeks so that the library can be renovated and the arrangements with the community and arts groups can be such that much of the cost, if not all of it will actually be recouped by rental agreements.

Councilmember De St. Croix noted that he noticed that most of the leaves on the trees are out, noting that he remembered last year the city had a problem with diseased trees along city streets. He said he would like to see the city care for the community greenery. Secondly, he added that he would like to look into something that other cities have been doing, that is having local greenhouses cooperate with the city in selling live Christmas trees. He said the trees can then be donated to the city, who could then plant them in parks and other areas.

Councilmember Middleton noted that he had visited Crestmont earlier in the afternoon and had been informed that all of the necessary clearances have been received so that the requests for the actual repair of erosion have been given to the Utilities Service Board. He suggested that the city engineer and utilities get it done soon, before a utility pole is lost, a sidewalk, and at least one building. He added that the city has the time and the money, and now it is just a matter of getting the work done.

Councilmember Olcott responded to Councilmember De St. Croix's remarks by adding that he knew that Mr. Justin Graves is working with the trees within the community on city property and in the parks, and that they are working in that area. He added that he assumed from Councilmember Kinzer's comments to the press that the library renovation had been assured by the Council, and noted that he had not been sold on it. He said he was not invited to a library meeting, and continued that he did not think it was a good ordinance, and was not money well spent for Bloomington.

Councilmember Kinzer replied that she had said she would feel good about being able to go ahead instead of the Council is going ahead, as the newspaper had stated.

Councilmember Olcott replied that it is a dangerous situation to try to be quoted and act like you are representing the entire Council.

Councilmember Richardson noted that the Monroe County Apartment Association has proposed several amendments to the Housing Code and that it has been postponed for two weeks, adding that they had a conflict in meetings that evening. Secondly, he thanked Leo Burke, Eve Berry-Brigl and Maggie Lynch and others for putting together the Youth Forum. He noted that over fifty people were in attendance, and that it was very productive, adding that he hoped something would come out of the Forum. Thirdly, he thanked Steve Richardson and Bruce Wackowski for personally getting the Mayor out of a jam on the City Court situation. He said both Steve Richardson and Bruce Wackowski were both willing and cooperative with the Mayor. He said he thought it would work out well for the City Court and expressed hope that it would work out well for the Legal Department and Human Rights Commission downstairs. He said one thing that has been overshadowed with PCB's, it that at the Utilities Service Board, they have introduced the new Rules and Regulations, which haven't been revised since 1949. One of the

things that they did do, as the Council had asked them to do in December, was to adopt the Consumer Bill of Rights. He commented that only one provision had not been worked out, but that he was confident something could be worked out. He stated it is important for the public and the press to be notified that this matter is now before them, and that discussion will be taking place on the specific proposals. Lastly, he echoed what Councilmember Olcott had stated about the Old Library. He said he is not going to challenge Councilmember Kinzer on how the newspaper sometimes misinterprets what you say, but people have been misled to think that there is some kind of compromise or workings going on with the Mayor's Office in relation to the Old Library. He added that he had not been invited to any meetings regarding the Old Library. He said when there are meetings concerning this issue, he would like to be notified.

Councilmember Towell voiced agreement with Councilmember Richardson's statement.

Councilmember De St. Croix thanked Councilmember Kinzer for working on something and spending all of the time she has on this project.

Councilmember Kinzer apologized for the lack of communication, adding that after the meeting, she left town and should have sent a memo to Councilmembers about the meeting. She continued what had been achieved in the meeting, was to try to get specific usage defined and that is what is coming up. She said she was not trying to represent the Council in her remarks, but only her own opinion.

Councilmember Blume noted that he had a letter from Robert Schmuhl of the Utilities Service Board requesting that John Komoroske be appointed as ex-officio member of the Utilities Service Board.

Councilmember De St. Croix moved and Councilmember Towell seconded a motion to appoint John Komoroske to the Utilities Service Board as the Council's representative in ex-officio capacity.

John Komoroske was then appointed as ex-officio member of the Utilities Service Board by unanimous voice vote.

Councilmember De St. Croix moved and Councilmember Morrison seconded a motion to introduce and read Appropriation Ordinance 76-9 by title only.

1st Reading
APPROPRIATION
ORDINANCE
76-9

Clerk Dolnick then read Appropriation Ordinance 76-9 by title only.

Councilpresident Blume then read the legislative synopsis for Appropriation Ordinance 76-9.

Councilmember De St. Croix moved and Councilmember Middleton seconded a motion to introduce and read Ordinance 76-21 by title only.

ORDINANCE
76-21

Clerk Dolnick then read Ordinance 76-21 by title only.

Councilpresident Blume then read the legislative synopsis for Ordinance 76-21.

Councilmember De St. Croix moved and Councilmember Morrison seconded a motion to introduce and read Ordinance 76-23 by title only.

ORDINANCE
76-23

Clerk Dolnick then read Ordinance 76-23 by title only.

Councilpresident Blume then read the legislative synopsis

for Ordinance 76-23.

Councilmember De St. Croix moved and Councilmember Morrison seconded a motion to introduce and read Ordinance 76-24 by title only.

ORDINANCE
76-24

Clerk Dolnick then read Ordinance 76-24 by title only.

Councilpresident Blume then read the legislative synopsis for Ordinance 76-24.

Councilmember Richardson noted that this Ordinance will be tabled for two weeks, as he remarked in his Message.

Councilmember De St. Croix moved and Councilmember Morrison seconded a motion to introduce and read Ordinance 76-25 by title only.

ORDINANCE
76-25

Clerk Dolnick then read Ordinance 76-25 by title only.

Councilpresident Blume then read the legislative synopsis for Ordinance 76-25.

Councilmember De St. Croix moved and Councilmember Morrison seconded a motion to introduce and read Ordinance 76-26 by title only.

ORDINANCE
76-26

Clerk Dolnick then read Ordinance 76-26 by title only.

Councilpresident Blume then read the legislative synopsis for Ordinance 76-26.

Councilmember De St. Croix moved and Councilmember Morrison seconded a motion to introduce and read Ordinance 76-19 by title only.

Second Reading
ORDINANCE
76-19

Clerk Dolnick then read Ordinance 76-19 by title only.

Amend Zoning
re SW 17th St.
between Maple
& Jackson RS
to RL, etc.

Councilpresident Blume then read the legislative synopsis for Ordinance 76-19.

Councilmember De St. Croix moved and Councilmember Towell seconded a motion to adopt Ordinance 76-19.

Councilmember Morrison then gave the committee report from Planning/Community Development. He moved that Ordinance 76-19 be amended to delete section three, and given a Do Pass recommendation.

Councilmember Kinzer seconded the motion.

Councilmember De St. Croix mentioned that he did not know how "sink-hole" fits into the ordinance.

Councilmember Morrison answered that the ordinance would change the BA and RL to SC.

Councilmember Towell said he had spoken to members of the Geological Survey and added that they do not know that there is no sink-hole action there, but do not think the zoning should not be effected.

Councilmember Morrison commented that he had played in that quarry hole as a child, and that it has a stone bottom.

Ordinance 76-19 was then amended to delete Section Three by a ROLL CALL VOTE of Ayes: 8, Nays: 0. Absent: Councilmember Young.

Councilmember De St. Croix moved and Councilmember Morrison seconded a motion to adopt Ordinance 76-19 as amended.

Ordinance 76-19 was then adopted by a ROLL CALL VOTE

of Ayes: 8, Nays: 0. Absent: Councilmember Young.

Councilpresident Blume then called for Reports from City Boards and Commissions, adding that the Annual Report from the City Attorney's Office is to be given tonight.

Steve Richardson: You have all received a copy of our annual report. We have been moving, and tomorrow we will file our first case of the leash law, which has become useful. I suppose we should reserve judgement for some time regarding whether the fines are effective, we don't know how effective they will be. I can see where particularly severe cases could stand for some more room for charging people who might be multiple owners with a nuisance animal...

Councilmember De St. Croix: Destroy it.

Steve Richardson: If the dog is licensed, we don't destroy it, we notify the owners. Do members of the Council have questions regarding our department or our operations?

Councilmember Towell asked if the office was different than last year as far as operation.

Steve Richardson: There is a difference in personalities. There were sixty hours of legal service a week last year and we now have eighty. I think it has helped a great deal. We are still, although we have gotten a number of judgements, particularly in the landlord/tenant area, we are still suffering from a number of judgement withholds, but are winning cases. I suppose better to answer would be the other departments, we have been quite busy. We are preparing now to interview legal assistants for the summer and will step up our ordinance enforcement program, as we already have, but we need more warm bodies to be in more places. What has transpired in the first four months of the year is, number one, myself getting acclimated to the office. Alice Craft is no longer engaged in private practice, and is now full-time with the city. We do not need any more attorneys. We have two attorneys who act for the city, and the corporate counsel.

Councilmember Middleton asked how much actual opinion rendering the City Attorney does as far as other department's requests as to whether their actions are legal.

Steve Richardson: Opinion writing is one of the most frequently requested activities of representation that we offer departments. We are into the twenties already, we number them serially as you do with your ordinances. Those are formal opinions. We also offer the review of any document, contractual documents demand a review. Legal opinion writing is probably a good guide, it sometimes becomes rather tiresome doing nothing more than writing opinions, but it probably the best preventative mechanism that we have.

Councilmember Richardson asked Steve Richardson about Monday's argument before the State Supreme Court regarding the Landlord/Tenant Ordinance.

Steve Richardson: On Monday, the case of Chuckney et al vs. the City of Bloomington and the I.U. Tenant's Union, commonly known as the Landlord/Tenant Suit, will be before the Supreme Court for argument, with thirty minutes on each side. Our petition for transfer claims that the Appellate Court wrongfully decided a new question of law. From the reading of their opinion, I wonder if they

read the statute. We have been in preparation for the last six weeks. It is very difficult to fit two sides into thirty minutes. John Irvine of Student Legal Services and myself will be representing the city. We have worked quite hard and now feel that we can encompass all of our arguments within the allotted amount of time. We will be representing the Common Council, and will be speaking for a stringent reading of home rule as a granted independence to the city and also in favor of the ordinance as written.

Councilpresident Blume asked Steve Richardson to speak specifically to the portions the city is hoping to reverse.

Steve Richardson: Articles stricken wholly from the ordinance were Articles 2, 3 and 4. Article 2 deals with the tenancy agreement and eventuality of obligation between the parties. It sets out the obligations of tenant and landlord, also requirements as to damage deposits, the warrantee of habitability, what we feel is the core of the ordinance. It goes to private enforcement of quality housing within the community. Section 3 is the traditional remedy section, that although counsel for the landlord's association feels that that is pure private law, we take the attack that it is very much a legislative action to provide remedies to individuals, particularly in this type of situation where the bargaining positions of the parties to any agreement are so grievously misaligned. Article 4 deals with retaliatory eviction and a curious matter that the court has stricken, the requirement that landlords cannot evict individuals for reporting deficiencies in housing. That seems curious to me because the court allowed the inspection requirement, and really at this point, the cutting off of retaliatory eviction portions of the ordinance really cut off redress of grievance in our opinion. In Section 3, it clearly states that we adopt and incorporate all traditional contracts, principles, and remedies into this ordinance and yet when we have suffered some rejudgement, it was argued by the landlord's association that we were writing into law contracts, which is not what we have done. Likewise, Section 11 of the ordinance has been stricken when it merely requires that the parties bargain in good faith. We feel there is a good deal of room for the court if they will apply the test of the statutes to come up with perhaps not all of the sections of the ordinance, we may have to go to trial on that again on matters should we win remand or win judgement. Certainly there is a substantial portion of the ordinance that we feel should be upheld as a matter of law, and that is what we will be arguing for.

Councilpresident Blume asked if the city can go to court again if the Supreme Court turns the city down.

Steve Richardson: That is a peculiar situation. The Supreme Court is really the one court in the state that decides new questions of law. That is one of the means for getting a question transferred to the Supreme Court, is that a lower court has wrongfully decided a new question of law. Given the standards in Public Law 250, which codify the Powers of Cities Act, there is no doubt that the courts will vote for it since they have totally failed to apply the statutory standard in black and white for all of us to read. What we are hoping, is that that major portions of the ordinance will be upheld as a matter of law, that they are incident to the exercise of a municipal power. That means that the city may exercise what powers are necessary and desirable for the effective conduct of government in Bloomington

and its environment; we think that it what Public Law 250 means. We think the Supreme Court is the proper place to decide that. We envision that parts will be set back in by the Supreme Court and the Court in certain matters that relate to factual questions, there has never been a trial on this ordinance and we have never been allowed the opportunity to present facts that would support the connection of a certain section of the ordinance to the operation of quality housing programs. We anticipate, should we win, that there would be a remand, at least a partial remand to take evidence, probably in a Circuit Court.

Councilmember Richardson stated that he is elated to have two attorneys fully behind the ordinance and fully believe not only in the Landlord/Tenant Ordinance but also that the city has a right to make these types of decisions. When we first had this passed by the Council, it seemed our City Legal Department was not too enthusiastic not only about its passage but also in pursuing it, and wished them good luck.

Steve Richardson: Although the Legal Department initially was not convinced of the validity of the ordinance, they wrote two, what I consider very fine briefs, and presented the question to the Court in very fine form and have represented the city vigorously throughout the dispute, perhaps now increasingly more vigorously.

Councilmember Towell said when he talked to Judge Nat Hill, he felt that it was a kind of question that another court should answer. That was a part of his philosophy on the case. He said he reported it at the time, and that a lower court may take that attitude in a case such as this one.

Steve Richardson: This case provides the only Indiana state review of the meaning of Public Law 250, although a federal court in a Gary case has already taken up the meaning of it, and we were very pleased when it came down on the side that we are arguing. This question has never come before the Supreme Court, in fact, even the Appellate Court created the new key numbers for municipal powers.

Councilmember De St. Croix asked if the City Attorney could assist the Council in looking at the future needs for City Court.

Steve Richardson: A lot of what ordinance enforcement involves is actually getting some judgements and persuading people that there is no profit in putting us off forever. We have seen this progression in the Landlord/Tenant Case, about every kind of dodge has been tried. This is a natural course of events in any kind of new law with any kind of substantial rights that are at stake, The key thing is letting people ^{know} what the ordinances are and perhaps win a few cases, we are very pleased we won the Grimes case recently, a mandatory injunction case on zoning. We think that is a substantial building block as far as zoning enforcement. We would like to have a similar precedent in the Landlord/Tenant case.

Councilmember De St. Croix moved that the minutes of March 4, March 16 and April 1 be approved. Councilmember Morrison seconded the motion.

The meeting was then adjourned at approximately 7:10 p.m.

APPROVE: Clem J. Blume
Clem J. Blume, President
Bloomington Common Council

ATTEST: Nora M. Connors
Nora M. Connors, Deputy
City Clerk - Council