

In the Council Chambers of the Municipal City Building, on Thursday, June 5, 1975 at 7:30 p.m., with Council president De St. Croix presiding.

REGULAR SESSION
COMMON COUNCIL
CITY OF BLOOMINGTON

Present: James Ackerman, Richard Behen, Wayne Fix, Flo Davis, Jack Morrison, Brian De St. Croix, Al Towell, Charlotte Zietlow.

ROLL CALL

Absent: Sherwin Mizell

Present: Karel Dolnick, City Clerk; Jean Patterson, Economic Development Committee; Stu Reller, Planning; Larry Owens, City Attorney; James Regester, Corporate Counsel; Marvard Clark, Engineering; Tom Crossman, Planning; Mike Corbett, Assistant to the Mayor; Steve Richardson, Assistant to the Mayor; Carl Chambers, Chief of Police; Bill Wilson, Parks and Recreation; Jeanne Strohm, Board of Public Works; Martha Sims, Controller.

CITY OFFICIALS

Council president De St. Croix called the meeting to order, and began with announcements. Councilman Mizell will not be able to join us tonight because of another commitment. This evening we will be considering an annexation of Maple Grove Baby Farms; a rezoning for the property at the corner of Knightridge Road and 46; a rezoning for Whitehall Square; Appropriation Ordinance 75-4, which covers a number of budget transfers and reappropriation of the money; a sense of the Council regarding the Economic Development Commission's proposed bonding; and Ordinance 75-27, regarding the Motor Hotel Associates' property. Between nine and nine thirty, we will be having petitions and communications. At first reading tonight, we will have an annexation and a restricted parking zone Ordinance. Now we'll have messages from Council members, and why don't we start at this end.

AGENDA SUMMATION

Councilman Fix: I might mention I'm reading something here from the Environmental Protection Agency, and I read in the paper today that Monday was the last time to get your thoughts in on the sewage treatment locations. I want to call attention to that.

MESSAGES FROM COUNCIL MEMBERS

President De St. Croix: O.K.

Councilwoman Davis: Thank you.

Councilpresident De St. Croix:
If you haven't done it, you better
do it. We don't have a message
from the Mayor this evening.

Councilman Fix: I move that we
amend the agenda to include Reso-
lution 75-14.

Councilman Behen: Second.

Councilpresident De St. Croix:
It's been moved and seconded that
the agenda be amended to include
Resolution 75-14. This resolution
was not on the agenda, and it is
not present on Councilmembers'
desks because it's an honorary
resolution for a member of this
Council. All those in favor of
amending the agenda to include
Resolution 75-14, signify by
saying aye.

The agenda was amended by a unan-
imous voice vote.

Councilpresident De St. Croix:
Do we have a motion?

Councilman Fix: I move that
Resolution 75-14 be introduced
and read by the Clerk.

Councilman Behen: Second.

Resolution 75-14 was passed by
a unanimous voice vote.

Councilwoman Zietlow: I move
that Resolution 75-14 be adopted
by acclimation.

Councilman Ackerman: Second.

Resolution 75-14 was adopted by
acclimation.

Councilwoman Davis: Thank you.

Councilpresident De St Croix:
Congratulations. Quite an honor.

Councilman Morrison: I move that
Ordinance 75-14 be introduced and
read by the Clerk by title only.

Councilman Ackerman: Second.

Councilman Morrison: I move that
Ordinance 75-14 be adopted.

Councilman Fix: Second.

Councilman Towell: I am the
Chairman of the Committee that
this came from before. We
scheduled this for our meetings
a number of times and came up with
questions that we transmitted through
members of the administration who
were present but, we found it very
hard to get replies, mainly from
the Legal Department as to answers
to our questions.

LEGISLATION FOR DISCUSSION/
VOTE

Resolution 75-14 Honorary
for Flo Davis Nursing Award

Ordinance 75-14 Annexation
Maple Grove Baby Farms

I would, however, like to submit in addition to the information that we have before us, another question which I think the Legal Department, and perhaps the Utilities Department would have to answer. And that is, I understand, that there is not sufficient sewer capacity for the entire subdivision, and Maple Groves Baby Farm, and that we are being asked to annex one lot. I'm just wondering about the matter of equity. Whether it's appropriate to annex one lot and thereby give them access to a City service that perhaps would not be available for some other people who would come to us and ask for the same kind of consideration. And that's the main question I have left in my mind. And I understand that something close to an answer has been given at various times sort of off the record. But I would like to have that discussed.

Councilpresident De St. Croix: Further discussion from other members of the Council? Would the Legal Department like to say anything?

Councilman Morrison: I would. Could the Legal Department give us approximate location of this lot?

Councilpresident De St. Croix: Mr. Owens, could you describe the property for us?

Mr. Owens: This is one lot that's in what used to be known as Johnson Addition. I think it's now called Maple Groves Baby Farms.

Councilman Ackerman: That's what he's asking about, where that is.

Councilwoman Davis: Yes, where is it?

Councilman Morrison: Approximate.

Councilpresident De St. Croix: Could you point it out on the map?

Mr. Owens: Very near and east of Dr. Bob Gammon's new optometry office, in back. It's right next door to Morse Typewriter. Do you know where that is?

Councilman Morrison: Oh, yes. Then are you on the highway or back off the highway?

Mr. Owens: You are on the highway.

Councilpresident De St. Croix: Some people here may not know where Morse Typewriter is, or Dr. Bob Gammon's house. Perhaps

you could describe the boundaries of the property by street or something.

Councilwoman Zietlow: There's a map.

Councilpresident De St. Croix: And there's a map.

Mr. Owens: They are all relatively close to the Bypass. Maple Groves Baby Farms is here, Dr Gammon's office is in this corner, and Morse Typewriter, right here. Paul, correct me if I'm wrong.

Councilman Morrison: Then you're east of Morse Typewriter.

Mr. Owens: Yes.

Councilman Morrison: Well, then that's the only sewer line that's on Whitehall Pike, isn't it Larry?

Mr. Owens: That's correct.

Councilman Morrison: I was under the impression, Mr. President, that that land was surcharged.

Councilpresident De St. Croix: Do we have a representative from the Utilities Department here to answer that?

Councilman Morrison: Well, I remembered before that this came up about five years ago on a rezoning, and it was turned down due to the fact of this high pressure surcharge and this sewer line. And I wondered if...

Councilman Behen: Annexation, you mean?

Councilman Morrison: Yes, not this particular annexation, but another one out there.

Councilpresident De St. Croix: Mr. Clendening, can you respond to that question?

Mr. Clendening: I didn't hear the whole question.

Councilwoman Zietlow: Couldn't we start at the beginning please and just have a description about the annexation and what the situation is?

Mr. Clendening: About three months ago, thinking that we were doing something that this administration had been pursuing over the last four years, namely volunteering for annexation, we simply came to the City Attorney's Office and indicated that we had

a client who has indicated he was interested in voluntarily annexing a lot, period. He asked for nothing in the way of extra services; he hopes to hook on this sewer at his own expense. There is no necessity of building an extra sewer line. He will pay for his own hook-on; he is on the highway. At that time, we were assured, since it was the policy of the administration to seek annexation of the adjacent, contiguous properties of the City of Bloomington, that that's really all that's necessary. Please submit a letter indicating that you want to be voluntarily annexed, and that will be it. Now that was, I think, a minimum of three months ago. We received one question, namely you know, what does your client intend to do about the sewer? And we responded as we were requested, indicating that our client intended to hook onto the sewer at his own expense. He's not asking for anything. Our client's in a business where he needs to be in the City and has volunteered to be annexed. He really thought that's all there was to it, and it comes as a great surprise to us to come here and find out that suddenly the policy has changed. Now we're worried about taking people in instead of anxious to acquire them.

Councilman Towell: Could I clarify that? Very shortly after it was submitted we started trying to consider it in our subcommittee. And the question that you answered came from our subcommittee. It was taken down by a Council Aide and transmitted to you. We had several questions which we thought should be addressed to the Legal Department. There were staff people there from another Department and that, to be sure, we indicated that we had a certain need for information. The Legal Department and our group tried several times thereafter to meet with that information and it wasn't forthcoming. So, that briefly is why there is such a delay, and I don't think the question that I asked is hostile to annexation of your client's lot. But it does need to be answered in my mind. It was one of the kinds of considerations we had in mind. (At this point in the tape Al turned off his mike. He indicated a concern of complications involved in annexing this section as to whether we would also have responsibility for sewer facilities to his neighbors. Summarized).

Mr. Clendening: ... given to those by some subdivisions, a deal if one will, whereby they install sewer lines, 50% of the cost being borne by the City. I was contacted and asked if this would be possible for this subdivision. The answer then given was no, after consulting with other city officials, utility officials, and so forth. That was the last that I heard about this question of that particular subdivision going to be annexed. Yes, they want to be annexed if the City would go in and essentially build sewer lines, which utility officials assured me was not possible because of fiscal reasons.

Councilpresident De St. Croix: The next question probably would be, is the City under any obligation to provide hook-on to the surrounding properties even if the owner of this property pays for hook-on himself?

Councilman Towell: I simply want to bring up the fact that (this is not a question, Larry) that in general, the City has had a policy of about 50% subsidy, especially in new areas. Maybe even more with rebates, development rebates. We started a policy last year of helping out with older areas in the City. I'm just wondering perhaps there is a schedule that maybe next year we might get to this.

Larry Owens: I realize you said that this is not a question, and I'd like to clear this up. I have absolutely no idea of what you speak. I am not the Utility Attorney. I am not on the Utility Board. I know nothing about the Utility policies with regard to this type of thing.

Mr. Clendening: If I could again just briefly respond to this question you asked of Larry.

Councilpresident De St. Croix: Please.

Mr. Clendening: I think when you talk about equal protection or equity, there are two major distinctions with this piece of property, I think this is what you're concerned about. Number one, these people are not asking for 50% of the cost of hooking on to the sewer from the City. They will bear all the cost themselves. So you're not giving them anything except the right

to hook-on. So, if other people in the subdivision want to build sewer lines to hook on, they can do that and that's equal protection. It's not equal protection to allow Marathon access to the sewer on Whitehall Pike, to allow McDonalds access to the sewer on Whitehall Pike, to allow Motel Six access to the sewer on Whitehall Pike, and then force these people to sit in front of that same sewer line that goes by them and not allow them to hook on.

Councilman Behen: Mr. Clendening, could you answer if you want to, (it's your prerogative to do so) why Mr. White didn't try and align some of his neighbors with him in this effort to just be a sole lot, to be just one lot. Didn't his neighbors share the desire that he does to be on the sewer, to be annexed to the City? It just seems so peculiar that only one lot of the whole area wants to be annexed. I question why he didn't try to ally some of his neighbors.

Mr. Clendening: He didn't go out and seek a petition among a whole area of the community because he thought those people would probably know their own minds and be able to voluntarily annex it if they so desired. It wasn't like he was coming in for a change of zone or trying to do something which had major effect on his neighborhood. He simply wanted to annex his piece of property and hook on to the sewer. So, I suppose that he didn't really think that he was having any real effect on his neighbors. And certainly, they have and, of course, he is just now buying this piece of property. I assume that his neighbors have owned the property for some time, and can come in and voluntarily annex any time they want.

Councilpresident De St. Croix: There is a question that we have to address that goes beyond the question of sewers. And that is, if the property is annexed into the City, that means it has full claim to all of the services of the City. That includes police protection, fire protection, trash collection, animal enforcement, you can go down the whole list. We had a very serious problem in various areas of the City, for example, on High Street, if we get a call regarding a fire, the City was in fact running out to an

area not knowing whether or not the people in that area were in the City or outside the City. Jurisdictional questions in terms of which enforcement agency were allowed to be dealing with the problem, etc., etc. So, although what we've done in the past is we've tried to close up those areas, I think it's a bit difficult in one regard for us to then take the next step toward opening up new areas like that with a sort of lot-by-lot annexation policy, which will leave us that same sort of Swiss Cheese City boundary effect that we had quite a bit of before.

Mr. Clendening: I would assume, based upon the policy of the City, that they are actively seeking to annex that entire tract when possible. I know that places west of this particular tract have indicated that they would agree to annexation as part of their requests for changes of zone. They have agreed to that. So I would assume again that it's not like we're picking up a lot that is beyond the City boundaries. You know we're picking up a lot that may be within areas with which we have a hodgepodge problem now, but we're trying to correct it.

Councilpresident De St. Croix: This I think is not being regarded with any particular prejudice toward your client, but in terms of a question of perhaps butting into an opposing viewpoint to a policy that we have tried to implement over the years. I may be misstating the situation.

Councilman Ackerman: Could we see the location of the lot that is behind the map which shows the annexed territory? I'd just like to see if there is already annexed land to the rest of that. And could the camera get out of the way?

Councilwoman Zietlow: Is that adjacent or contiguous?

Councilman Ackerman: Thanks, that's fine.

Mr. Clendening: You see the intersection here of Curry Pike and Whitehall Pike, and the intersection here of the Bypass and Whitehall Pike; you'll notice little yellow marks here, big yellow marks here ...

Councilpresident De St. Croix: Well it seems to me that you were

pointing that out and I ... want ... for everybody to understand that.

Councilwoman Zietlow: You see, it's primarily adjacent and contiguous to Whitehall Pike, correct?

Mr. Clendening: Yes, it primarily is adjacent and contiguous to Whitehall Pike.

Councilwoman Zietlow: I mean that's where it hits the City.

Councilpresident De St. Croix: Mr. Register, are all those little spots up there that Mr. Clendening has referred to still in fact yellow spots, or have some of them turned white again as the result of court action? I'm wondering whether or not any of the annexed properties surrounding the proposed annexation here are in fact no longer annexed.

Mr. Register: They are all annexed.

Councilpresident De St. Croix: None of those are under any court disputes?

Mr. Register: Nobody asked for a general policy of the Legal Department, so I'll give it. The Legal Department has recently and quite contrary to our track record, suffered a very severe defeat by the industries of the Westside. We haven't given up on that. And we expect as quickly as possible, that those industries will be adjacent to the City if not because of the alleged annexation of Curry Pike, with the help of the Council, the Legal Department is going to make them adjacent. And this may just be one lot, but we will be coming in with other requests. Now, Councilman Ackerman had questions. There is a question of what under recent inactment by the legislature, annexation does carry with it certain responsibilities that are greater than they used to be. And in a recent Indiana Court of Appeals decision that Mr. Owens and I have read, where annexation is sought against the wishes of those that you're attempting to annex, it is incumbent on the part of the City not only to prove the contiguity, but also to prove that the City has a definite plan and capability of rendering the service that you have been asking about. So, consequently, should we have an effort, lay out an effort to annex a large hodgepodge piecemeal of an area in the Westside, then the Legal Department will expect the cooperation of the Council in its budget steering capacity, and go into court

and prove that we do have a plan that will meet the present requirements. We don't think those requirements are unreasonable, but they are legal requirements, so we do have problems we didn't have before. Not only on what's the contiguity, but also on what is in the plan. But we are sold on the equity of people who are nearby and who already have been treated, (as editorials have pointed out many times) as an integral part of our total community, should be a legal part of our community. I still think that those people that I'm referring to still carry 47401 as their zip code on their letter heads, rather than Van Buren township.

Councilman Ackerman: Just to make sure that I understood you Jimmie, the lot that we're talking about does fall within the overall plan of annexation of the City.

Mr. Register: This would not require these special privileges.

Councilpresident De St. Croix: Thank you.

Mr. Register: I'm sure Mr. Clendening at this time does know that his sewer line, that they would be utilized of course is a forced main, and I assume the engineers for his client have taken that into account. Bloomington Transit Association is doing that, so is Westinghouse and other people in that area. It wasn't exactly what they wanted, but a forced main.

Councilpresident De St. Croix: Mr. Clendening, does your client in fact know that? Is your client in fact willing to meet the costs of hooking on to a forced main?

Mr. Clendening: Mr. Register, have you submitted a letter?

Councilman Ackerman: Yes, it's part of the letter.

Councilpresident De St. Croix: Fine. I just wanted to make sure that the record showed that Mr. Clendening's response was in the affirmative.

Councilwoman Davis: Question.

Ordinance 75-14 was passed by a ROLL CALL VOTE of AYES: 8; NAYS: 0.

Councilpresident De St. Croix: Ordinance 75-14, perhaps to the

surprise of the petitioner and the attorney, is adopted unanimously.

Councilman Morrison: I move that Ordinance 75-30 be introduced and read by the Clerk by title only.

Ordinance 75-30 Zoning
Edward Graves

Councilman Towell: Second.

Ordinance 75-30 was then read by title only.

Councilman Morrison: I move that Ordinance 75-30 be adopted.

Councilman Towell: Second.

Councilpresident De St. Croix: It's been moved and seconded that Ordinance 75-30 be adopted. Is there discussion? Perhaps we could have a summation of this zoning request please.

Mr. Crossman speaks from the floor: We have two Ordinances on the agenda and I'm not sure exactly which one this is.

Councilpresident De St. Croix: This is Edward Graves' request for Arboretum Park.

Mr. Crossman: Having been mapped and designated, the developer then has the responsibility as well as the right, to commence to veto engineering plans and proceed with his development. The action that he would be asked to take when this is finalized in second reading, would be a designation of the area as a planned commercial development. From that time on, the developer may then proceed with engineering plans and construction plans for his project.

Councilpresident De St. Croix: This is second reading tonight. Now the petitioner must draw up plans and have them approved by the Planning Commission.

Mr. Crossman: Plans have been approved by the Planning Commission. The project is (I don't know whether Mr. Graves or his representative is here tonight. He could probably explain it a good deal better than I can.) It's a fairly large area. There are some forty to sixty very small shops, craft shops, gift shops ...

Councilman Behen: How many did you say?

Mr. Crossman: As I remember, the total plan includes about forty to sixty. A number of them were studios rather than sales

outlets. Most of the shops were independent detached buildings in a landscaped area around the pond, or a pond that he was proposing to build where the depression in the land is.

Councilpresident De St. Croix: Further discussion, questions from the Council. Is Mr. Graves or his representative present?

Mr. Crossman: There is an old house on the lot at the present time. That house is being proposed for as a restaurant.

Councilwoman Zietlow: Indiana's finest restaurant.

Councilpresident De St. Croix: Does the Council choose to act on this without the petitioner or his representative present? Further questions or discussion from the Council?

Councilman Morrison: I would like to make one question. Tom, how large is the area there that Mr. Graves is planning on developing?

Mr. Crossman: It runs from the intersection highway right-of-way ...

Councilman Morrison: Approximate acreage. I know more about acreage than I do about ...

Councilpresident De St. Croix: Containing five acres more or less. It's a part of the description.

Mr. Crossman: Yes, and he has an option for an additional eight acres in an L-shaped area surrounding ...

Councilman Morrison: I know then you were talking about the main studios and shops. And I noticed this approximate five acres. I was going to say it would be fairly crowded on five acres.

Mr. Crossman: I would think it's a good deal more than five acres. I would suspect it's about twenty-five acres. It runs at least 600 feet from Knychtridg Road south and about 400 feet deep.

Councilwoman Zietlow: Has the Planning Commission discussed the potential traffic problems with...

Mr. Crossman: Yes, the project was designed so that he's got a one-way drive with the ingress being approximately 300 feet from the intersection. It loops around behind the existing house and exits

to the south so that the traffic flow is one way with one entrance and one exit. Originally, he had two drives, both two-way and it was redesigned at the request of Jim Deahl, City Traffic Engineer.

Councilman Behen: When you said it exits to the south, do you mean still onto Knightridge Road?

Mr. Crossman: It exits onto Knight-ridge Road. But it's about 200 feet south of the entrance.

Councilman Morrison: Tom, do I understand you right, there is about 600 feet on Knightridge Road and about 400 feet on Third Street?

Mr. Crossman: It may be close to 600 square feet. But my recollection is about 600 by 400.

Councilman Morrison: Well, it it be 600 by 400, that would be just a shade over five acres.

Councilpresident De St. Croix: Further discussion. Ready for the question.

Ordinance 75-30 passed by a ROLL CALL VOTE of AYES - 8; NAYS - 0.

Councilman Morrison: Moved that Ordinance 75-31 be introduced and read by the Clerk by title only.

Ordinance 75-31 Zoning Whitehall Square

Councilwoman Davis: Second.

Councilman Morrison: Moved that Ordinance 75-31 be adopted.

Councilwoman Davis: Second.

Mr. Crossman: This too is a request for a designation as a Planned Unit Development, a Planned Commercial Development. The property is one the north side of Whitehall Pike. It's about 200 feet from the intersection of Curry Pike. The project encompasses two phases totaling about 25 acres. I believe that the developers are here tonight to explain it in detail. It is a small strip-type shopping center consisting primarily of grocery and discount stores and ancillary small retail shops.

Councilpresident De St. Croix: Does the Council have further questions for Mr. Crossman?

Councilman Towell: This came to our committee rather recently, and I was out of town for some time and Mr. Mizell was out of town. So, we haven't gotten to it. But I have read carefully the report which I think covers most of the main points. Some of

them, however, I don't quite understand. I would like to ask you the business about the entrance and exit and how it got pushed around and for what reason. Could you review that for us please?

Mr. Crossman: The original entrance was approximately at its present location in the discussion with the planning staff and the traffic engineering staff. We recognized the possible development of major shopping centers approximately across the road and slightly east of this location and had hoped that there would be a means of connecting the potential access roads and in direct alignment from the proposed shopping center area across the street, with the area here so that a single intersection can control both pieces of traffic. At the Planning Commission meeting, other considerations were made. The developer's traffic engineer is here this evening. He is the traffic engineer both for this project and for the shopping center project across the road, both being done by totally different developers. So you have some opportunity to coordinate the traffic flow between the two developments. I think it was the discussion that ensued as a result of his expertise and the recommendations of the Planning Commission and the recommendation of the Planning Commission that shifted the section...

Councilman Towell: There was something there that puzzled me about how most accidents happen at intersections with lights. That struck me as very curious. Do you want to comment on that or shall I wait on him?

Mr. Crossman: Well, I don't recall who made that comment. I do recall that it was made. I suspect that if it's probably a clear statement of fact that the lights are put there because the accidents occur.

Councilman Towell: Chicken and egg?

Mr. Crossman: I believe it would be a chicken and egg situation.

Councilman Towell: And the stages in which the project will be built?

Mr. Crossman: It's being proposed in two stages. The first stage would consist of the discount store, a few small ancillary shops and a grocery store. The second stage is as yet unplanned. But the land is designated for the project.

Councilman Towell: And then there was one other point: that would make three shopping centers over there. I noticed there was one resident, he seemed to be the only one present at the hearing that objected to so many shopping centers.

Mr. Crossman: I suspect that if we are to assume that all of the projects that we have had before us come to fruition, he is correct. I think that economically, it would stand to reason that only one of the two major regional centers is ever going to get off the ground. And this by and large is not the same type of center consisting primarily of grocery service and discount store service, which presumably is not the sort of thing that the regional centers are catering to.

Councilman Behen: Some observations, and you criticize me or whatever you'd like to do. Being the City Planner, you are in an enviable position to make a judgment on what I am about what I am about to say. I just placed a letter in January, 1972 in all the other Councilmembers hands from a Reverend Father Buck of St. John the Apostles Church, where he outlined what could conceivably happen to that area. Which not because I happen to be of this flock, but because I share his concerns for that area. I would like to portray it to you if I could, the orderly growth that took place on East Third Street from High Street on down to about where Eastland Shopping Center begins. The chaos that ensued thereon for about a mile ... and I can envision, (and if Council would share my vision) that St. John the Apostles Church may conceivably be sitting next to a Boxman's Chicken place within the next five years. If we continue to pursue efforts to develop a short strip of land between the bypass and Curry Pike to the degree that the developers want to do, and there are many factory workers that have to come to and from work using that as the main road to get there and back each day. It rained terribly hard this afternoon, and the very site that we're talking about, I would not want one of my children playing there because there were areas of that ground that they would have drowned in. There is no way to get that water out of there. The sewer line where I work this afternoon, the sink was gurgling and spitting water out of the sink two and one half feet off the level from where I was standing. And I can't conceive that we would let development just run rampant out there without paying the piper in the end from inadequate facilities or ability to run the water and not create the chaos that's bound to ensue that we

have had happen out on East Third Street. But in addition to what happened out on East Third Street, we're compounding the program or the problem, with water run-off that we can't cope with. That's what I mean. You can tell me where I'm wrong.

Mr. Crossman: I don't think that I could agree with you more, Mr. Behen. In fact, I think that one of the elements of concern in the staff report of the Planning Commission, was the fact that the lay of the land in this site was exceptionally low and ponded at almost every rain, and that the solution to the drainage problem was a primary consideration before they develop the plans for final approval.

Councilman Behen: But it seems to me that they can solve their water problem. But them who inherits it?

Councilpresident De St. Croix: Whoever's downhill, I expect.

Mr. Crossman: In previous developments, when we've had water problems that would permit water to flow from one property to property on downstream, have required retention basins. Now in this particular project, the amount of water that can flow off of the property is restricted by the size of the drainage conduit under the highway so that their drainage calculations are going to have to be very carefully prepared.

Councilman Behen: Or else I might drive to work through the water.

Councilwoman Zietlow: Do you already have satisfactory information about the way that drainage will be handled and the ...

Mr. Crossman: At the preliminary hearing, Councilwoman Zietlow, we don't require final engineering on the project. We do require that the general concept of the system will work, and this sometimes does create some problems. The detailed engineering is not really required until the project is designed.

Councilwoman Zietlow: But you are satisfied that there will be adequate drainage?

Mr. Crossman: I am satisfied that there could be. I don't know whether there will be or not. I think that the project engineers will be responsible for that.

Councilwoman Zietlow: What about pedestrian and vehicular circulation? How is that satisfactorily dealt with?

Mr. Crossman: Well, the problem is internal roads. It is access to and from Whitehall Pike. The major difference between this type of development and the sort of development that we've seen on East Third Street, is we are talking about development in depth with roads that run into the property off of the highway rather than a continuous strip of individual commercial lots fronting along the highway.

Councilman Fix: It's interesting. I just remembered a couple of years ago that this particular tract of land was developed in a court case where they were suing the people who had developed upstream from them.

Councilman Behen: The main concern I have is if you have standing water waist high now on raw land, and you're contemplating covering this much of (and I know it's not a total coverage of 25 acres), but this portion of 25 acres, with parking and with roofs, then the run-off is going to be... (tape ends)

Mr. Crossman: ...right away and/or improve the highway. If the highway is improved in fact as part of these developments, the conduit under the road would probably also be increased. This, of course, compounds the problem on the property downstream because the obligations of these developers would be to insure that no more water flows onto the property downstream than they can currently expect to be flowing in that stream.

Councilpresident De St. Croix: Is that a measurable amount?

Mr. Crossman: Oh yes, it's fairly significant amount. I don't think...

Councilpresident De St. Croix: Then we can predict with accuracy that that will happen.

Mr. Crossman: I think that we would not approve the development plans unless the engineering were satisfactory to that end.

Councilpresident De St. Croix: But we can make those determinations by looking at the plans. I just want to make sure that people understand that kind of thing.

Councilwoman Zietlow: Do you have any predictions as to the traffic that this project will generate and how this will be handled by the road?

Mr. Crossman: I think probably

Mr. Fehribach, who is project engineer for both this project and the one across the road can speak for the total traffic generation better than I can. We have a copy of the traffic report but I think he can probably outline it more quickly than I could.

Mr. Fehribach: I'm a consulting engineer, traffic engineer from Indianapolis, as Mr. Crossman has said and I worked on the traffic for both this project and the other project in the large shopping center. I think that the first thing we must realize is that this is a neighborhood shopping center and the other center will be a regional shopping center generating considerably more traffic. It is anticipated that the traffic from this for this center, 70% of it, will come from the west, whereas the regional shopping center, 70% of it will come from the east, so that basically between the two shopping centers, there will be very little traffic. In addition, the regional shopping center, we anticipate 10% of the traffic, 205 of them using the Curry Pike entrance, and the same for this...only 10% coming from the west using Whitehall Pike. So there is kind of a no-man's-land in there and that was the main reason for separating the two intersections and not trying to put the two centers together. If we did, the small center would be overrun by the traffic from the large center. So by keeping them separated, the main entrance to the large center, further east, we can plan that traffic for left turn lanes and turn with traffic signals, turn that traffic into the center. These people from the west will also have adequate left turn lanes so that they can get into their center and both can get out. Now that is the general plan. I might respond to the statement on the accidents. I was the one that made the statement. I did a three-year accident analysis in 55 cities in the state of Indiana, and I would estimate that at 98% of these intersections, the accidents occurred at signalized intersections. So the high accident locations, in what I know to be 55 towns, are at signalized intersections. Signals do generate accidents. They may also prevent some accidents, but they do generate accidents.

Councilman Morrison: I think, to the gentleman here, the biggest question I would ask, especially on the Curry Pike entrance, and I have driven that road many, many a day when Westinghouse, and G.E. and what all is letting employees

out, and I tell you right now, nobody can tell me that they can come out on Curry Pike in about an hour because I've sat there high as thirty minutes getting out. So what I'm interested in is this. What would happen to this when both these factories let out and the majority of the traffic takes south, and then you have people coming out of this shopping center. I very seriously doubt that anybody could move. And I also think the wrecks would be terrific because right at the present time, you can't make any turns going north on Curry Pike during the rush-hour.

Mr. Fehribach: From Whitehall, you mean?

Councilman Morrison: Going north on Curry Pike toward the factories.

Mr. Fehribach: From Whitehall, you mean.

Councilpresident De St. Croix: Do you have any doubt on that, sir?

Mr. Fehribach: First of all, the traffic getting out of the center, will be, shall we say, at their own peril. If they can't get out, the worse they are going to do is sit there and wait. Now that is a problem for the center. In other words, it will not be affecting the people who are trying to use both Curry Pike and Whitehall Pike. If someone is forced to sit in the shopping center and wait, it won't be a safety problem to the people on the street.

Councilpresident De St. Croix: Is that an abuse of the free market system?

Councilman Morrison: I very seriously doubt that a motorist is going to sit there for fifteen or twenty minutes without becoming irritated and attempt to try to get out.

Mr. Fehribach: Well, you are right. First of all, we are estimating that now we're taking four p.m. to five p.m. which is the peak hours for the streets in that area. It is not necessarily the peak shopping hour. In other words, there are more people using the shopping center at a later time. But the worst condition occurs at the four to five p.m. hour. Now, we estimate that entering Whitehall Pike, from Whitehall Pike, we will have 105 vehicles making a left turn and 90 making a right turn.

Councilman Morrison: In how much of a period, sir?

Mr. Fehribach: This is a one-hour period.

Councilman Morrison: Sir, I'd have to disagree with those figures tremendously. You're going to have to prove that to me because I sat for thirty minutes one day trying to get out on a service call.

Councilpresident De St. Croix: Excuse me. Do you have the dates when this data was collected? Was it a weekend, or holiday?

Mr. Fehribach: No, misunderstanding. Let's back up. This is the people who use...this is not the traffic on the street, sir. This is the people coming out of and into our driveways. This is what I'm anticipating as the traffic using this...

Councilpresident De St. Croix: This would be new traffic created by the development.

Mr. Fehribach: All but 5% of it. I'm assuming 5% of the traffic will come from the people home and to work.

Councilpresident De St. Croix: Do you have estimates on the current traffic in that area between four and five? Could you add that together for us, your estimate for the new traffic generated by the center plus the existing traffic flow. Then we'll have a total picture of what could be there then.

Councilman Morrison: Mr. President, just a point of order so I can understand something. The figures the gentleman just gave us, are these the automobiles coming out of the shopping center, or is this the automobiles on Curry Pike?

Councilpresident De St. Croix: The estimated automobiles that would be generated by the shopping center.

Councilman Morrison: Going to Curry Pike, that's fine.

Councilpresident De St. Croix: Within 5%.

Mr. Fehribach: At the present time, there are 468 vehicles southbound on Curry Pike. We're estimating 5% of that traffic will go into the shopping center. And we will have 60 vehicles entering the shopping center. 23 of these vehicles will be there today. They are going home from work and they are going to stop at the grocery store.

Councilman Morrison: Sir, point of order. At the present time, you cannot cut the lanes of traffic because I got a ticket for cutting the lanes of traffic. So they cannot turn left and go into the shopping center. You cannot cut the lanes of traffic on Curry Pike.

Mr. Fehribach: We're getting way out of order.

Councilman Morrison: If we're getting out of order, let's get the story straight.

Councilpresident De St. Croix: Perhaps we can establish an order here. Councilman Morrison, your question is, number one, how many cars are traveling that route now, at the rush hour. Number two, how many new cars would be added to that by the new shopping center complex, right?

Councilman Morrison: Number three sir, you cannot cut the lanes of traffic.

Councilpresident De St. Croix: Well, before we get to the inability, let's find out how many cars won't be able to do it. How many cars are there, when the plants let out now? And then how many cars will be added to that?

Mr. Fehribach: South bound from Curry Pike, there are 468 vehicles currently.

Councilpresident De St. Croix: What are the dates for the traffic count?

Mr. Fehribach: In April of this year.

Councilpresident De St. Croix: On a normal work day.

Mr. Fehribach: Over several periods of time. We took a twelve-hour manual count. I had two people sit out there on two different days for a total of twelve hours counting all the turn movements at the intersection of Whitehall and Curry Pike. We will add to that 37 new vehicles entering the shopping center. We are only talking about the four p.m. to five p.m. hour, the peak traffic hour on the street.

Councilpresident De St. Croix: So 37 additional cars would be trying to cross that lane of traffic?

Councilwoman Zietlow: Plus 23 that are already there.

Mr. Fehribach: 37 new plus, for a total of 60.

Councilpresident De St. Croix: So that brings us to 528, right?

Mr. Fehribach: 505, and there are 60 trying to get out at the same time and turn left.

Councilpresident De St. Croix: 468 and 60 is 528.

Councilwoman Zietlow: How long is the street here that they are going to be lined up on?

Mr. Fehribach: Almost 1,000, 800, 900 feet long. It's an internal roadway. From Curry Pike up there almost all the way back to the grocery store.

Councilpresident De St. Croix: People from the Council have a sense of the traffic then?

Councilwoman Zietlow: I think so.

Councilpresident De St. Croix: I wonder if Chief Chambers could give us any observation from the enforcement viewpoint as to traffic problems in that area.

Councilman Morrison: That's the Sheriff's Department, Mr. President.

Councilpresident De St. Croix: Do you have any knowledge of that, Mr. Chambers? I'm not trying to put you on the spot, I'm curious.

Chief Chambers: I think I would have to agree with Councilman Morrison that this is a very hot spot, and what we try to do is keep our squad cars out there from getting them wrecked up.

Councilpresident De St. Croix: Am I to infer then that it is very difficult to move through that area?

Councilman Behen: I'm off traffic, is that all right?

Councilpresident De St. Croix: No further.

Councilwoman Zietlow: That's just an interesting and boggling fact. If you have sixty cars lined up waiting to get out and you have a 1,300 foot road, then that is full. Unless they are bumper to bumper and Volkswagons, then it's not quite full. That's a tremendous, tremendous, vision.

Councilman Ackerman: Except your engineer said they all were waiting to turn left.

Councilwoman Zietlow: Well, nobody could turn right and see somebody turning left in front of them.

Councilpresident De St. Croix: That really could be a problem.

Councilman Morrison: During the peak hours, four to five o'clock, now this shopping center, you cannot turn left, you have to turn right. You cannot break the lines of traffic. The traffic coming south, the gentleman just stated that they were getting "X" number of cars going into the shopping center. That is not true because you can't cut the lines of traffic turning to the left. You've either got to go north, or south. All right coming south, as he just stated, that they were getting "X" number of cars going into the shopping center (tape break)...well, in that area, I don't think you are going to get to first base.

Councilpresident De St. Croix: Well, let's see if he makes the run.

Mr. Fehribach: The important point that I need to make here is that Mr. Morrison is correct and if you use the street with the configuration that is there today, you would not be able to get the traffic into the shopping center. However, one of the most important parts of my report are the recommendations. And the recommendations are to widen this to a third lane which would be an exclusive left turn lane, so that persons wanting to turn left could wait and the by-passing people can still go past them. At the same time that we have the heavy flow southbound on Curry Pike, it is an extremely small flow going northbound. So there will be an adequate gap for these left turning vehicles passing through the northbound traffic. So if the recommendations are followed, that I have made, to add this other lane, then the traffic will flow. There is no problem. There will still be a problem in getting out of the shopping center, but as I said earlier, that is within their own proper.

Councilpresident De St. Croix: Could you expand upon this third lane please. I'm not sure I understand who is going to build it and how much it will cost.

Councilwoman Zietlow: Is this a City street?

Mr. Fehribach: Yes, the lane is proposed and will have to be constructed as part of the total City development cost by the developer.

Council president De St. Croix:
That's a mid-street turning lane.

Mr. Fehribach: This is right. It's a matter of taking (it's rather hard to explain a third lane and how it works without being able to draw it out). It's a matter of widening the street. The present Curry Pike is 24 feet wide. Widening it to 36 feet for a given length to angle the traffic and then taper it back in. And this will provide adequate safety to everybody and still let the traffic flow by.

Councilman Morrison: In talking about adding the third lane. The third lane would have to be added to the west side of Curry Pike to allow the traffic going south to have the turn lane to go around, to go on down to Whitehall Pike, isn't that right?

Mr. Fehribach: Not necessarily, sir. It could be added to either side. It's a matter of engineering design. If I had a blackboard, I could show you how you could do it either way. You could actually split it down the middle and do half of it on either side.

Councilman Morrison: How are you sure that you are going to get the twelve foot from either side. Are you assured of that?

Mr. Fehribach: I'm not involved in that. I'm saying this is if you do these things, if the developer does what I have recommended in my report, he won't have a problem.

Councilman Morrison: Mr. President, I'm really confused because I'd like to know if you could enlighten me. Maybe I'm just a dumb Indian but (tape gap)....

Mr. Fehribach:...no, sir. You have to have a lane on the side of you, but you don't have to build it to the west. You have to have a lane on either side of you but to add it, you can add it either to the right or the left, or split it half and half.

Councilman Morrison: And then can you answer me a question, sir.

Mr. Fehribach: Yes.

Councilman Morrison: I've driven a truck for many, many a year. And how am I going to turn left to get into that shopping center. You've got to cut that third line of traffic somewhere.

Mr. Fehribach: Do you have a blackboard?

Councilman Morrison: I'd sure wish you would draw me a picture. I certainly can't get it through my head. (Mr. Fehribach then gave an explanation of the engineering diagram scheme.)

Councilman Towell: Perhaps I can formulate the question. I think we are concerned over here with the fact that there will be a very full road of people going north, and we're going south...

Councilman Morrison: And going south.

Councilman Towell: And how are you going to get through the traffic that's going north?

Mr. Fehribach: No, that's my point I made earlier. There is not that much going north. Coming south there are 417 vehicles, excuse me, 468 vehicles. Going north there are only 254 in an hour.

Councilpresident De St. Croix: So 254 is how many in an hour? (no answer given that is audible)

Mr. Fehribach: That means that the flow, there is plenty of gaps. You've got a traffic signal at the intersection creating gaps in the north-bound lane.

Councilpresident De St. Croix: That's a car every fifteen seconds.

Mr. Fehribach: You only need three or four seconds for a gap.

Councilpresident De St. Croix: I think people are kind of circling on the traffic question here, and there are additional questions about the traffic. Let's deal with them.

Councilwoman Zietlow: Well, I have a question, what days had these taken place?

Mr. Fehribach: April 10 and 11.

Councilwoman Zietlow: I'm just curious because there have been a number of lay offs on the west side and we would want to know whether that was a kind of minimal employment out there rather than normal.

Mr. Fehribach: The City of Bloomington made machine traffic counts last year. And these are in the same general range. There is always a day to day fluctuation, a month to month, a week to week, but they are in the same range of what they counted on their machine.

Councilpresident De St. Croix:
Could we have an opinion from the
Legal Department as to the con-
struction of the additional lane
there, by the developer? I don't
see any (perhaps I'm missing it)...
is there material that shows the
right of ways here on the roadway
and the ownership and whatnot. I
think that's what's required to
fulfill your recommendations, is
it not.

Mr. Fehribach: The adequate
right-of-way will be required,
yes.

Councilpresident De St. Croix:
Do we know if it is there?

Mr. Fehribach: I do not know
the right-of-way personally what
is there.

Councilpresident De St. Croix:
We don't know if the City owns
it or if it is privately owned?

Mr. Fehribach: That is correct.

Councilwoman Zietlow: Was there a
committee report on this?

Councilman Towell: I explained that
this was a fairly recent submission
to our committee, and that the com-
mittee has been incapacitated during
that period.

Councilpresident De St. Croix:
We have had a number of Council
members out of town for different
periods of time.

Councilman Ackerman: This is just
a point of information. I don't
think the Council received the min-
utes of the Planning Commission, but
the Planning Commission did dis-
cuss this and unanimously endorse
it.

Councilpresident De St. Croix:
It's attached to the original
package.

Councilman Towell: Yes. It was
there.

Councilman Ackerman: It's not on
mine.

Councilman Towell: I had a general
question about the planning of
this area. I remember the special
concern we had for Whitehall Pike
when we were doing the Zoning Ordinance.
So I think this question
is probably addressed to Mr. Cross-
man. But it is traffic and you may
find something to say later about
it. Our general rationale for pre-
venting Whitehall Pike from becoming
a Third Street (that is East Third
Street), was frontage roads. And

I'm wondering if that scheme is being carried out. And I noticed in the minutes, some comments on this. And recently in a meeting, Chamber of Commerce people were objecting to this approach as being too expensive or taking up too much land or...and I just wonder where we are with this.

Mr. Crossman: We have in the past requested the development or design of frontage roads in two or three developments. They were not in this immediate area. If you will have a copy of the site plan in front of you, there is an internal road system which produces both the effect of a frontage road running north to south, and out onto Curry Pike, the intersection that has been recently been discussed. And there is an opportunity for continuation of an east-west road which you will see, terminates in the original plan here, in the form of a cul-de-sac. So assuming that there were properties on either side of us that could continually be developed, there would be a possibility of tying them together with an internal road system.

Councilpresident De St. Croix: So in other words, we are at a point now where if we can find out how much right of way there is, and whether we have access to it or if the persons who own that right of way, if there is an option to purchase from them; if they are willing to purchase it, or if we can claim it. We can then deal with the traffic problem. Assuming that there is further development, we have the option of putting in the service roads. So, we are dealing with a series of assumptions or "ifs".

Mr. Crossman: Well, I think its' going to not, in the final analysis, boil down to an either-or, President De St. Croix. I think the improvement we're talking about is Whitehall Pike. The widening and improvement of Whitehall Pike is going to be essential. And the development of internal frontage roads is going to have to be collateral with an auxiliary to, rather than instead of. It's really going to have to be a both/and situation.

Councilpresident De St. Croix: As a planner then, is that process best engaged by creating a critical need for that improvement or by further development, or to do the improvement and then proceed with the development?

Mr Crossman: Well, I think that the improvements, if those that are proposed ultimately occur, will enhance the development or the improvement on Whitehall Pike. In the instance of this particular development, we're talking about a partial improvement on Whitehall Pike itself plus the delegation of additional right-of-way for improvement in those areas that ultimately become the City's responsibility. And when we're talking about the major shopping center on down the road, we're really talking about the improvement of the entire length of road in front of it.

Councilman Behen: I am no less enthusiastic than any of the rest of you about the traffic out there for our experience (that is I experience it daily). But I still want to address all of your minds to what is occurring out there with the water situation. Right now, Curry Pike becomes inundated right around Hospitality House, and unless we take this area out there as a total of all the structures that are going to go up in that area, and what the ramifications are going to go up in that area, and what the ramifications are going to be downstream, we're going to have old people floating out of that place in addition to flooding Highland Village. Jackson Creek hardly had a name several years ago, and this stream that bears its earth right from this property, has a tremendous ramification downstream. In view of that, and in view of the fact that we aren't sure who has the right-of-way, (and I'm terribly sorry to be the one to suggest it) but I don't believe that we should proceed with this particular thing and I think it should be tabled regardless of the consequence. I'm sorry to be the one to suggest it. But I want to know exactly what's going to be permitted, which shopping centers are going to be tolerated, before I can vote on something that I know is going to create another Jackson's Creek, where there is no ability for the water to get away.

Councilpresident De St. Croix:
Is that a motion, Councilman Behen?

Councilwoman Davis: Second.

Councilpresident De St. Croix:
The motion is on the floor is to table Ordinance 75-31. Is there discussion from the Council on tabling the motion.

Councilman Ackerman: I'd like to speak against the tabling. It seems to me that as much as I regret the traffic problems and the water drainages problems that we have with the zoning that already exists, much development of that land could take place and the same kinds of problems ... R.H. zoning is for a major part of that, that you could have a similar kind of traffic problem with the zoning that is already there and with the planned unit development concept that we can work to try to alleviate the problems as much as we can. I think that the problems are not going to go away. And this kind of proposal at least gives us some kind of a handle for getting a hold of it.

Councilpresident De St. Croix: Mr. Clendening, I presume that you would like to speak to this motion. I wonder if you could briefly sum up your response to it. I'm not sure that even if we can get a sense of the right-of-way and traffic flow, that this might be discussion that we can solve it quickly out of.

Mr. Clendening: There are a number of factors to be considered. Part of it is, number one, the Planning Commission's report which didn't get to you somehow. We were approved unanimously by the Planning Commission. But the conditions on that approval are that we do provide the improvements that we show on our plan, namely those passing blisters and turning lanes. The conditions are that we had (we thought at that time) at least preliminarily satisfied the Advisory Committee and the Engineering Department that we could adequately handle the drainage problems. That was a condition of our approval at that time. The discussion at this point, as pointed out by Mr. Ackerman, has taken the tone of a choice between the development that we are now proposing for this particular land, and no development at all. That, I would respectfully submit, is not the choice before the Council. Our Rezoning Ordinance provides that a shopping center may be built in an ML or an MG zone once it is zoned, (about 95% of it at least) ML or MG. It's industrial land. It's not farm land to be left vacant; it is industrial land. The question before you is whether you will approve the outlying plan designation as a planned commercial development as was recommended to you unanimously by the Planning Commission. The question of drainage in Jackson Creek I think may raise a very fine analogy in that approximately three years ago, I appeared before this same body talking about the Jackson Creek Apartments. We had a developer

so brazen about the drainage problem at Jackson Creek that he almost was kept from developing those apartments. You will recall at that time that the engineer was required to provide for ponding in the parking areas sufficient to keep the flow off of his property from increasing the rate of flow down Jackson Creek. The engineer said he could. I think many people in the audience that night thought, no he absolutely could not. I think the facts have born out that he has not created a serious problem for Jackson Creek. He did do exactly what was required of him. He didn't change the rate of the total planned unit development, the outline that we're talking about, the outline plan is a total of 25 acres. The initial development is about nine acres. This piece of property, (and not being an engineer, I cannot give you the exact technical terms) but our engineer presented it to the Technical Advisory Committee and to our understanding, to their satisfaction. This point in here is essentially the collection point for 320 acres or 317 to 320 acres, drained in this direction, through the middle of the property so that all of the property is drainage bed, one storm sewer that you're talking about. What we're talking about covering out of that 320 acres is changing the ground cover and changing the flow so that the ground can absorb the water, by a very insignificant amount compared to the total amount of property that's draining in here. That's the problem that exists. It's not a problem of what runs off of what used to be Mr. Sparks' farm, it's a problem of roughly 320 acres. We're talking about changing 9.

Councilpresident De St. Croix: Yes, but you are talking about the 9 in between the other 310 and the drainage point.

Mr. Clendening: Don't forget, we're not covering the whole 310.

Councilpresident De St. Croix: No, no, just the part before it glugs down, collects down. I think it collects.

Mr. Clendening: We're talking about controlling the place where it now collects. We're talking about going to the technical advisory committee which we did, and showing them the figures which we felt showed that we could control the runoff off of that property. We were definitely informed that we would not be under obligation to control that runoff, and we felt that we could do so. That again is a condition for our developing the plan. More specific data would be presented with the

development plan of phase one. Phase one being these approximate mine acres right here. So we're under an obligation to control that drainage and realistically we should improve that drainage because there will be something done to control this. Otherwise, it will be left as is, there will be no change. We will be required to do something to control that ground, to control that drainage.

Councilman Fix: We've spent a lot of time talking about that entire area and I don't think anybody really appreciates the problem out there on that sinking creek. It does not have a natural outlet. All of that water goes underground. And there are lots of houses in that area that are almost under water now. I don't know how many back yards are almost under water now whenever we see an inch of rain. Anything we do here is going to compound that problem. And we have lots of people that have gone through there under mistaken notions that their drainage was taken care of and nine acres is not going to make any difference. And so, I will have to dispute a little bit, let's say that the apartments have not increased in flow. Well, we don't know that. That's rainfall patterns. We'll find out whether those rainfall patterns have increased in flow or not. Were the same patterns that gave the flow before, the same now, or will there an increased flow. It has been fairly dry the last few years, fortunately. And I will always be one who will say that we need to solve that sinking creek problem, and one of them's going to be how much land are we going to put under an impervious cover. That's one way of solving it. Another way is getting a natural outlet for that water because the geologists predict that we're going to have an earthquake before the year 2,000. Now if we do, the entire Highland Village is going to be under water. Hospitality House is going to be under water, and we don't know when it's going to happen, but an earthquake could sure do it. And we need to get ready for some catastrophe like that because a lot of life is at stake.

Councilman Morrison: Councilman Fix brought up one question I was going to bring up. But the second question I was going to bring up, and I'm just sitting here thinking about it. We're not going to be able to do with the West Side Shopping Center what we did with the

East Side Shopping Center, due to the fact that you've got a four-lane highway that's going to completely divide it from the City proper. Now that means the taxpayers, in the not too distant future, the way it's going to develop out there, this is going to effect the entire City of Bloomington. There is no way that I can see (inaudible) the plan being developed. What you're going to have to have, number one, a new fire station, and number two, a new police station, because due to the fact, I think with the four-lane highway that is separating Highland Village from the City property, it's going to make it complex to be able to give adequate fire and police protection. And I'd certainly like to hear Chief Chambers' point of view on the police protection of the four-lane highway separating this magnitude of shopping complexes.

Council president De St. Croix: Excuse me, we're now talking about this development here. We're talking about the two of them side by side.

Councilman Morrison: Well, this will be only on the side of the bypass.

Chief Chambers speaks from the floor: There is no question that any time we stand moving traffic in large highways or shopping centers, that you have created problems for law enforcement as well as the Fire Department. And I think Councilman Morrison is correct that it does end up back on (inaudible) what to do with situations that haven't been planned. Now, previous to me saying we stay out of the area at peak traffic, basically we do this occasionally because we have a lack of personnel and a lack of squad cars. We can't afford to tie them up in situations that might exist. I think proper planning on the highways, the exit and entrance to these things, unfortunately we don't have much input into the Planning Department as law enforcement. I don't know what is going into this before it's developed. It's very difficult for me to speak for it. I know we have traffic problems out at Eastland and out at the College Mall. You'll also see officers getting run out of the street which they are trying to direct traffic on when the light malfunctions. We're talking about putting them up on barrels for their safety. Crime increases. You have more opportunities for criminals to come in, to go through and get out. And you create a lot of problems. I'm not against expanding the City. I'm not sure that I can give a direct answer to Councilman Morrison's question.

Councilpresident De St. Croix: Thank you for reminding us of the needs of your department.

Councilwoman Davis: I'd just like to clarify. If we approve this, then we will have to come back with a siteplan, then there will have to be more approval, and you will have to reassure us that you are taking care of the traffic and the drainage. And one of the things that we haven't talked about is I think this would all go into the South Sewage Plant.

Councilman Fix: I would assume it would.

Mr. Clendening: It will if it's a manufacturing use also.

Councilwoman Davis: Anyway, right now we have a problem with our South Sewage Plant. Have you talked with the Utilities Department about this?

Mr. Clendening: We haven't talked specifically to the Utilities Department. We will during the development planning phase. We are required to come back with a development plan which has much more rigid requirements. For each phase of the project (Tom Crossman described it in two phases) I would say that it's more like one major first phase and eight phases beyond that, one at a time. I don't anticipate just an immediate development of a second phase. What we're really talking about is phase one. I realize I got cut off a little bit. We never really made our presentation this evening. If I may, I'd like to speak to a couple of other things briefly.

Councilpresident De St. Croix: There has been a call for the question. Would the Council like to hear further discussion?

Councilman Ackerman: I'll withdraw my call for the question.

Mr. Clendening: Number one, Mr. Behen talked about Father Buck's letter of 1972. We have the advantage of talking with Father Buck about that in 1975. As recently as a month and a half ago, we met with the Parish Council of St. John the Apostle. They are on record at the Planning Commission as not opposing the project, presuming that we meet the requirements of the Ordinance for screening on their side of the project. So St. John the Apostle is not our opponent this time.

Councilman Behen: I didn't indicate that it was...

Mr. Clendening: His concern of 1972, I don't think it was defined. I think his Parish Council is on record this time as not being opposed to the project. The question of a frontage road again. The intent of a frontage road I think is to provide one access point off the major roads. That's what we're doing. This 25 acres is the only undeveloped land in that particular quarter. Immediately west of us is a plumbing company that's already developed. So we're talking about one access point for the entire tract instead of just our nine acre first phase.

Councilman Ackerman: Question.

Councilpresident De St. Croix: The motion before the Council then is to table.

Steve Richardson speaks from the floor: The only thing I wanted to say was that the right-of-way on Curry Pike was fifty feet, to answer your question.

Councilman Fix: I'm not really in favor of tabling this thing. But some way or another we're going to have to call attention to some of those things that Dick Behen has mentioned here and get a complete answer to this area. And the answer is probably not stopping one of these things. There may be other choices, but I think we need to know what the answers are. So I'll vote yes.

The motion to table failed by a ROLL CALL VOTE of AYES: 4 NAYS: 4. Councilmembers Towell, Davis, De St. Croix and Ackerman voted no.

Councilman Ackerman: Should we call for a break now or should I reintroduce Ordinance 75-31?

Councilpresident De St. Croix: Well, we'll break now for ten minutes.

Before we return to consideration of Ordinance 75-31, it's time for petitions and communications. I believe we have a petition and if people would like to come forward.

PETITIONS AND COMMUNICATIONS

Susan Kayvie speaks from the floor: I wish to bring before the Council the possibility of establishing a farmer's market here in Bloomington. The main concept is to give farmers in the region an opportunity to market their fresh-grown produce directly to the people in town, and to give people in town access to the kinds of domestic produce that is going to be available this summer. And I'm bringing this proposal here before the City Council in order that the people that I have gotten together who are interested in working on this

FARMER'S MARKET

project could work cooperatively to find an appropriate location for the market and to iron out any difficulties that would arise.

Councilpresident De St. Croix: This issue was recently brought before the Parks and Recreation Department, particularly as it related to the possible use of the Third Street Park here behind the Municipal Building. The Board's determination was to the contrary of the request. And I've just asked Council Legal Assistant to do some research into it. Just a main skimming of the major points that we have here and then I am going to call on Mr. Corbett, the Mayor's Assistant, to state the Mayor's position on this issue. There is no particular clarity in the law as to whether or not the Council can overrule any sort of decision that the Parks and Recreation Department has made. However, there may be a possibility for that as long as they are not doing something that's clearly in contradiction to public policy or law. The state statute Parks and Local Parks Department is (tape break)... not substantially changed. In other words, a full time year-round operation which would essentially change the park from a park to a market. The final recommendation on the legal research is that the matter be referred to committee for consideration in order that we could contact other cities. I believe there are several other cities that have recently inacted this type of community market, and perhaps find a less controversial site than Third Street Park. Mr. Corbett, I believe that you requested to represent the Mayor's position. Then Councilmembers could perhaps speak to this issue and any concerns they have on it.

Mike Corbett speaks from the floor:
In a staff meeting on Tuesday, Mayor Frank McCloskey expressed that he was in favor of a concept of a Farmer's Market for the City of Bloomington. He had asked me and Russ Bridenbaugh from the Council staff has also been looking into it and researching it. We met this morning with two citizens who were interested, and we sort of came to some conclusions after getting the preliminary legal analysis that the Councilpresident just described. I'd like to point out that we are going to research it. We are in favor of submitting to the Council Committee so that the citizens can work with the Committee and that we can all sort of find what other cities are doing and get down to some of the basic questions about who would eventually administer such a program, and all the little details which seem to have come out of the discussions as we get into them more

and more. I would like to reiterate again that the Mayor is in favor of such a concept.

Councilpresident De St. Croix: Discussion from Councilmembers.

Councilman Towell: Some of you may have remembered that I advocated a market not just for produce, but for handicrafts in a Courier Journal interview more than a year ago, and at that time, I got almost no response. So, I'm happy to see the thing revived. I think it's very important that we have the benefit of what there is in the immediate area for sale to the citizenry and that way escape the trends and fluctuations of the national economy that we could...there are a lot of things that come from right around here that we could have more cheaply and at a more stable price. And then I think there would be an influx of people into Bloomington if we had a popular market. So those are some of the things that I feel very strongly about this proposal.

Councilwoman Zietlow: I would like to stress as a Councilmember that I favor the concept of a market very much, and I think the question of whether or not the Third Street Park is usable for the Farmer's Market should not discourage us from pursuing the question. I think I don't know if it would be appropriate to move in sort of a Resolution that the Council should endorse the idea, but I do want to, if you think it's useful, I'll so move. However, I do want to stress that we do go ahead with the concept of the market wherever it may be. And I've talked with a number of downtown merchants who feel too that this would be very helpful to encourage the development of the downtown. I would suggest that somebody from the Downtown Merchant's Association be included on the committee that is formed.

Councilpresident De St. Croix: Further discussion from other members of the Council.

Councilwoman Davis: I too wish to speak in favor of the Farmer's Market. Several summers ago, we spent a couple of weeks in Canada. I'm sorry I can't remember the name of the town, but one of the things they did there on Saturday was block off about a block of the City street in which everyone brought their things and set up their booth. I think there is definitely an interest in this. Many of us drive quite some distance just to buy some produce.

Councilman Morrison: If my memory serves me right, I remember about three and a half years ago, this

same Council discussed this same project and the sole wish of all the Council at that time was to have a Farmer's Market, and I think it's a great idea, and I commend the young lady for proceeding with us and I say take it and run with it.

Councilman Behen: A thought just ran across my mind, the possibility of Mr. Corbett, Mr. Bridenbaugh, exploring the possibility of using maybe one of the lesser used off-street parking lots for such a venture. The first one that comes to my mind would be Seventh and College.

Councilwoman Zietlow: I assume that other sites would be clear. We have a big rubble pile at Sixth and Morton.

Councilman Morrison: That would make an ideal Farmer's Market.

Councilpresident De St. Croix: If I may speak as a member of the Council, I don't think the issue before us is whether or not it's the Farmer's Market, or perhaps a more expanded version as Councilman Towell has indicated, Community Market. I do think that it's clear that there is a great deal of talent and goods and produce that comes from this community. It's another simple reality that a lot of people don't have sources of income at this point and another significant portion of this community is having to work very hard at being able to meet their basic requirements, such as food and other such minimal necessities during this period of time. There may be also merit in this concept in the sort of community focal point that it offers and the opportunity for interchange and co-mingling by the various communities within this community. I wonder if, as Councilwoman Zietlow first indicated, offered to move for a sense of Council on this, would be appropriate and whether or not a Council Affairs Committee could refer this to a Committee of the Council and request that they involve not only the people in the community who have been pushing this, but as Councilwoman Zietlow pointed out, perhaps merchants from the area, other people think that might be a good idea.

Councilman Morrison: I would encourage the Councilmembers to look into the feasibility of utilizing the lot at Sixth and Morton, because that certainly would be an ideal location for a Farmer's Market.

Councilpresident De St. Croix: I hope the Council will consider that option and any others that may exist.

Councilwoman Zietlow: I move that the Council resolve to support the concept and the pursuit of the development of the Farmer's Market.

Councilpresident De St. Croix: It's been moved and seconded that Council express its support for the concept of a Farmer's Market. And further that the Council support the full exploration of all alternatives and options for the institution of such a market. Further discussion on the motion.

Councilman Towell: I'd just like it to be a roll call vote.

The motion for a Farmer's Market passed by a ROLL CALL VOTE of AYES: 8, NAYS: 0.

Councilpresident De St. Croix: Are there further Petitions and Communications? The Council Affairs Committee will assign to the appropriate committee or committees of the Council this area, request that they act on it with all due haste, and report back to the community and the Council on that. No further Petitions or Communications. Then we return to the discussion of Ordinance 75-31. We've talked about the traffic. We've talked about the right-of-way, we have determined that there is a fifty foot right of way that the City has.

ORDINANCE 75-31
Whitehall Pike

Councilman Towell: I'd just like to say some obvious things about drainage. Maybe they have been taken into account. I don't know. And that is, what the petitioner has said is the engineering will be such that the rate of flow will be the same as it is now. Ponds are being designed to hold the water, then let it go more slowly. The problem when you have a development like this is that you have more paved surface so the run-off is more rapid. That's what was happening in Jackson Creek as well. That seems to me quite a reasonable proposition if it's done and if it's carried out. And there won't be any more rain on this piece of property except if we get more into a wet pattern than we are now, not because of this development. So maybe that's a clarification. I'm not sure.

Councilman Ackerman: I'd just like to speak in favor of this. I wish Councilman Mizell were here to represent the input of the Planning Commission and to speak. What I am going to say in maybe a very bumbling and obvious way. It seems to me that when we were making the new Zone Ordinance, one of the things I found very attractive with Planned Unit Development, planned commercial development, is that we had an opportunity to work in an overall planned way (in this case it's over nine acres) rather than cut land that is already zoned for industrial use and high residential use into small parts and have to deal with this in a bits and pieces way. Granted that there are

these problems there that must be solved but it seems to me that we have the means here for doing this further on down when they come back with their specific plans. So I'd like to support this.

Councilman Towell: I'd like to have, perhaps Wayne Fix address the drainage thing again.

Councilman Fix: Yes, I was speaking in terms of the overall drainage area of Sinking Creek, and the fact that Sinking Creek does not have a natural outlet. It does go into, there are a series of sink holes, two main ones go into them. The one that you recognize is the lower one, which is on the Airport Road, and there has been extensive development all along Sinking Creek. I don't know the names of them, mobile home parks and housing developments. The Hospitality House is right adjacent to it, which I think is a health hazard, Cooke industry has got a plant there. Otis might be safe by a scant inch or two or something like this. But we do have this problem with the ridges around the sink hole that receive all of this water from the watershed. Our grate, one of the natural outlets that could be used, is taken up by another shopping center, Spring Lawn there. There is only two possibilities as I see it of getting a natural drainage flow out of that area. Everything else to the west and directly to the south goes back to the sink holes again and it has to go mainly east and southeast to get the natural flow out so that it can continue on down to the Gulf of Mexico. And as I say, the ridges around this are so high that if the rock strata shifts, and it doesn't have to shift very much in the natural evolution of things here, the water would not be able to be received into the rock formations and water will back up until it does break loose over the ridges. And if we do have up to a five inch rain in a matter of about a four hour period, just one of those would inundate the area. And that happens awfully fast when you take a midnight or two o'clock in the morning four-hour rain backing up that quickly. It's quite a problem, a problem that the community needs to address itself to and we just haven't done it.

Councilpresident De St. Croix: Is that what you wanted to tell? Thank you. I wonder if perhaps people could essentially sum up their questions. We've been discussing this Ordinance for over an hour.

Councilwoman Zietlow: I agree with Councilman Ackerman that it is desirable to have a unified development of the land. This evening the answers to the questions that have

posed have in my opinion not been satisfactorily answered, nor indicated an understanding of the problem. And I'm not convinced that the ways that the present developers are dealing them is going to be satisfactory. I don't understand the drainage problem. But the traffic problems, I think are quite clear and the indication to me is that they are not being understood quite properly.

Mr. Clendening: I want to ask for a point of clarification and respond to the traffic question. The traffic question was presented to Jim Deahl and the rest of the Traffic Department, and we felt or they felt it was satisfactory. That's why I assumed Mr. Istrabadi voted yes at the Planning Commission. Again, we had this entire report that Mr. Fehribach didn't convince you evidently that we had the answers to the problems in that area. We recognize it as a problem, and it's a problem that we have to be very concerned with because if the traffic problems are severe, we won't be able to get people in and out of our shopping center, and we won't make any money. That's why we're going there, to make a profit. So we certainly intend to deal with those as soon as we possibly can and as well as we possibly can or we wouldn't be here. Number two, just for clarification on behalf of the petitioner, it's my understanding that Councilman Fix was talking about the drainage and sink hold problem for the entire West side of the county. You are not talking about being able to resolve our problem by this one 25 acre tract.

Councilman Fix: No, but I would ask if your client would be willing to enter into a group venture there and pay his assessed valuation for doing private work in getting Sinking Creek under control.

Mr. Clendening: I'm not sure what we're talking about, but we did commit ourselves at the Technical Advisory Committee and the Planning Commission to resolve what they defined as being the drainage problems at that time.

Councilman Fix: My question is, would you be willing to enter into a private, or organization with a conservation district or something which could be used for taxes or private contributions to solve that problem.

Mr. Clendening: I would have to say I assume yes, but I don't know by definition what you are talking about. If you are talking about a \$500,000 commitment, I can't very well commit

my client without turning around and asking him a little bit.

Councilman Fix: I remember I used to do a lot of drainage work, you know, and we'd ask them, how much is it worth to you. Don't put your name on it, but write down on a piece of paper how much money it would take. So we'd always have more than enough money than we need. Then I'd say, O.K., let's go again and put your name on the piece of paper. Then we'd never have enough money.

Councilpresident De St. Croix: Just one point of clarification from Mr. Crossman if we could. What kind of guarantee does this Council have, I'm sure Mr. Clendening understands this problem, that although the various experts in municipal government may seem to have concurred with a presentation of one of Mr. Clendening's clients on a given issue that the Council may not view it from the same perspective. I'm not sure that we had the same amount of material prior to this discussion that I've seen from you in the past, Mr. Clendening. What guarantees does this Council have that these problems will be met before that property is developed, Mr. Crossman?

Mr. Crossman: Well, I don't think there is any implication on behalf of the Planning Commission, Technical Planning Staff, or Technical Advisory Committee, that the concerns that Councilman Fix and Councilman Behen have expressed as far as the drainage is concerned, have been solved. I think that what we have said very clearly in our report is that the systems are capable of solving the problem, and the engineering work that needs to be done at the development phase of the plans. The City Engineering Department and the Technical Advisory Committee will very carefully check over the details as they are presented to us. The traffic situation, I think is perhaps, in our opinion, solved to a little greater degree than is the drainage situation. We do have Mr. Fehribach's very detailed report. He didn't go through the entire report this evening. We do have the proposals for additional improvements on the public right-of-way at the entrance and exit points to the shopping center. We do have the commitment from the Planning Commission on behalf of the developer that adequate additional right-of way would be indicated in those areas where the property fronts on Whitehall Pike. They have the opportunity to dedicate some right-of-way because obviously they can't do it when they don't own the property where additional public

improvements would have to be made.

Councilpresident De St. Croix: So with the exception of the drainage problem, this Council has guaranteed, through this process of a conditional approval, that all these problems will be solved, ranging from screening to traffic.

Mr. Crossman: The entire package is going to have to be engineered in detail before the construction plans will be approved.

Councilpresident De St. Croix: Right. Until those are solved, nothing can happen. I wonder if the Legal Department could indicate to the Council what perogatives the City would have if those options were not met in... and development occured. In other words, if they design plans and what not and they meet the approval but then are not implemented. This is not to impune your client's character.

Mr. Regester speaks from the floor: The site plans, and the engineering that went with it if it did not meet the approval of the Council, then no building could ever begin.

Councilpresident De St. Croix: I'm presuming there was approval given and the development did not meet what was approved.

Mr. Regester: Well, it wouldn't be the occupancy permit. Now it could be that they could be enjoined from proceeding.

Councilpresident De St. Croix: Thank you. I just wanted to make sure that that was stated in public. If there is any question about procedure, an occupancy permit will not be issued until such time as it is determined that all the conditions are not only met in plans, but also in reality.

Mr. Regester: And, if work proceeded without an occupancy permit, there could be an injunction.

Councilpresident De St. Croix: All right. Thank you. I'm just trying...

Mr. Clendening: One very important point on traffic. I'm not sure this has been made clear. That is, we talked about traffic in conjunction with the inner development and with the Engineering Department and Planning Commission. One of the feelings at that time is if the inner development also is developed then definitely, probably even if it's not, it probably will have to be filled in some day. One of the contingencies for our approval at the Planning Commission was that we agree to dedicate sufficient right-of-way to allow

for that on down the line. So that we are providing for the future traffic problems of Whitehall Pike, namely, in addition to building at this time, quite passing western turn ways to determine the match. We've taken some pretty major steps toward long range planning for the traffic in that area.

Councilwoman Zietlow: You aren't sure you have the right of way to do that?

Mr. Clendening: No, we aren't. It's there.

Councilwoman Zietlow: You are sure.

Mr. Clendening: We call that two right-of-ways. Now one is the right-of-way up on Curry Pike, that right-of-way is available.

Councilpresident De St. Croix: That's twenty-five feet wide, Mr. Crossman for turning both ways?

Mr. Crossman: What we're talking about is additional pavement within the existing right-of-way. Yes, it would be.

Councilman Towell: Question.

Councilpresident De St. Croix: Clerk Dolnick please call the role. The question is for the adoption of Ordinance 75-31.

Ordinance 75-31 was adopted by a ROLL CALL VOTE of AYES: 7, NAYS: 1. Councilman Behen voting Nay.

Councilwoman Zietlow: Moved that Appropriation Ordinance 75-4 be introduced and read by the clerk by title only. Seconded by Councilwoman Davis. Passed by unanimous voice vote of the Council.

APPROPRIATION
ORDINANCE 75-4

Councilman Morrison: Moved that Appropriation Ordinance 75-4 be adopted. Councilman Towell seconded.

Councilman Ackerman: I just checked the records with the Council Aide on this and the Council Affairs Committee did not refer the transfer of funds to the Community Resources Committee. I would like to move that this part about the transfer of funds to Parks and Recreation for the Older American Center be either tabled or deleted to a separate ordinance. We have met several times with members of the Parks Board and discussed this informally. We have not reached any kind of resolution in our committee, nor have we discussed this within the past two or three weeks. I just checked and this ordinance was not referred to our committee, and I think we should have some input into this before a decision is made. I could give you some input as an individual Councilperson, but I would like to appeal that this be sent to our committee. Seconded by Councilwoman Davis.

Councilpresident De St. Croix: It's been moved and seconded that the section under Parks and Recreation Department appropriation be deleted and referred to the Council Committee on Community Resources.

Councilman Towell: I'm the other member of the committee and I'll support that.

Councilpresident De St. Croix: My apologies as a member of the Council Affairs Committee if this was not formally listed in the instructions of late. It is my understanding that it had been discussed, and I believe that I have probably requested the Council staff on at least one occasion that it needed to be brought to the committee's attention. Perhaps I neglected to do it in a formal procedure. And then that's my fault.

Councilman Morrison: I would just like to ask Councilman Ackerman a question. Why delete just one section here?

Councilman Ackerman: Because that's the only part that falls under the jurisdiction of the Community Resources Committee. I have feelings and input to give on the Animal Shelter thing although that's not part of my area of the oversight of the Community Resources Committee. And I think we have discussed this and gone back and forth on this, of the transfer of funds out of the Parks Board, from the Board of Works, I assume, over into the Parks Department. It's presently being funded out of the Board of Works, and I was wondering now when we're going into a new budget planning for the coming year, whether or not it is the right time to make this move. I certainly would like to discuss this within the committee and with members of the Parks Board.

Councilman Towell: Is it a major inconvenience to table the whole thing until next meeting.

Councilpresident De St. Croix: Yes, it is, particularly in terms of some requirements for the Police Department, the Animal Shelter needs their money, we need some money for the Council budget. This essentially moves from the Human Resources Department money which is already available to the Parks and Recreation Department through the Controller's office and just puts it back in the budget. As a member of the Council Affairs Committee, and I guess as an officer of the Council, I'd just like to say that it seems fair that if a committee of the Council is to request review over an area of its jurisdiction, we should honor that request by that committee.

Councilman Towell: I'm not disputing that, I just asked about the rest of your . . .

Councilpresident De St. Croix: I'm just stating my position.

Councilwoman Zietlow: Can we set a time for when this can come back because I think it is something we'd like to hear the resolution of.

Councilman Ackerman: Do you think you could have this by the next one or two meetings of the Council? We will try to meet with the Parks Board and our committee and make some report on this part of the ordinance.

Councilwoman Davis: Question.

Councilman Morrison: I'd like to explain my vote. I don't agree with it in theory, but I respect the committee's wishes. So, I'll vote yes.

ROLL CALL VOTE: Ordinance 75-4 passed by a vote of AYES: 8, NAYS: 0.

Councilman Towell: Can I ask for an interpretation of the motion? I know the wording is correct, but wasn't the meaning really to table that part until next meeting? If we delete it, we will have to have a new ordinance with a first reading and a second reading.

Councilman Ackerman: I said to delete or table it. I wasn't sure what the appropriate thing was. We do intend to act on it eventually. What did it say, delete or table. Delete?

Councilpresident De St. Croix: If I remember correctly it was . . .

Councilwoman Zietlow: Then it means we have to readvertise that question.

Councilman Towell: It will take some time to do all that. And I thought really the meaning was table, and I'm asking for that interpretation now.

Councilman Ackerman: I said delete or table it. Oh, can't you table one part of an ordinance?

Councilman Towell: You can divide the question and table.

Councilpresident De St. Croix: Excuse me but a motion has been accepted by the Council. The vote has been announced. I believe that Mr. Ackerman indicated in his earlier statement. I may be incorrect. Perhaps the Clerk can clarify it, that we could come back with another appropriation ordinance. If the chair misinterpreted the statement on restatement of the question, then I think there can be a request. I'd gladly order to restate the question. But I'm not sure that I misinterpreted the motion.

Councilwoman Zietlow: Since there was some discussion as to whether or not this could come up at the next meeting, and since it could not come up at the next meeting if it were deleted, I would say that the motion was not clearly stated.

Councilpresident De St. Croix:

It could come up at the next meeting in terms of a report from the committee and to a recommendation on their part as to introduce an additional ordinance. As to not taking such action, your request was, how soon could we have this before the Council. I only ask for a time period from Mr. Ackerman. If the Council would like to take other action at this point, I will entertain a motion. Mr. Parliamentarian, how do we deal with this from a parliamentary perspective?

Councilman Towell: Well, we could always reconsider the motion. Now that the motion is more clear, it seems to me that we have some justification for that and someone in the majority can say "move to reconsider," and then we can do it correctly. So, I'll move to reconsider the motion to delete. Councilman Morrison seconded the motion.

Councilpresident De St. Croix: There is a motion and second to reconsider to delete. Now as we discuss this motion, could the mover clearly state and repeat the motion; the intent of the motion. We don't want to misunderstand it. And let's see if we can deal with it expeditiously.

Councilman Towell: The motion has to be the same motion, and I would urge its defeat this time so we could have a different motion.

Councilpresident De St. Croix: But there is a first motion and the Council has to adopt a motion to reconsider first, before we can repeat the second motion. Am I correct? Thank you. O.K. The motion on the floor is to reconsider. Is there discussion to reconsider this motion?

Councilman Ackerman: I'd like to speak against it because I think the intent of my motion was pretty much as it was interpreted by the chairperson of the Council. That we would make a report to the Council within the next one or two meetings and frame an ordinance on the basis of that report.

Councilwoman Zietlow: If that was the intent, it was not clearly stated by the chair. And it was certainly, at least, it was not clear to me. I would have voted otherwise.

Councilpresident De St. Croix: On the motion to reconsider here, I wonder if Ms. Sims, could you provide some additional information

here. What does this do in terms of the Parks and Recreation Department Older American Center? Does it make any change? Except administrative?

Ms. Sims: No, it doesn't.

Councilpresident De St. Croix: O.k., thank you.

Councilwoman Davis: I don't really see any problem at the time. The Department is functioning all right. Whether or not we do it today, next week, or wait until we do it in the new budget, or not do it, doesn't matter about the function of the department, does it? Does it interfere with the functioning of the Department, Mr. Wilson?

Mr. Wilson: Yes, in essence, I think it does mainly because it creates a tremendous burden on bookkeeping. Part of it is the Board of Works, part of it is in the Human Resources. It's not clear since the Human Resources does not have a director, who signs the purchase orders. It all has to be processed through the Controller's Office and through the Mayor's Office. And it's really in limbo.

Councilwoman Davis: Does it make more work for you, Ms. Sims?

Ms. Sims: Well, it just makes it separated.

Councilpresident De St. Croix: Has this resulted in any inability from CETA funds for the function of the department, or any delay in receipt of those monies.

Mr. Wilson: No, it hasn't.

Councilpresident De St. Croix: So, it's essentially a conceptual difficulty in dealing with a budget that has been split then. And it's not neat on the books, right?

Mr. Wilson: The only thing I would urge if at all possible, is if we could do it in two weeks. I'd like to encourage this. Mainly because once these figures were advertised, of course, no bills could be paid because this is a publication for transfer. This means that the longer it's delayed, either we have to republish it, we have to refigure all the new figures and come back with a different one. We're still talking about the same amount of money. It was budgeted and approved, etc. It's a problem of readvertising and refiguring what has been expended, deducting it off these figures and redoing it. In two weeks, I think we could hold the bills. In another two weeks, without any problems, we could still use the same figures one way or the other.

Councilpresident De St. Croix:
O.K., thank you. Further discussion.
The motion is to reconsider the earlier
motion. Council ready for the question?

Councilman Ackerman: I spoke earlier
against this motion. I think since
Councilwoman Zietlow indicated that the
discussion did not make it clear what
she was voting on, I think that out of
respect for clarity, I will support
this motion.

Councilpresident De St. Croix: Further
discussion? Clerk Dolnick please call
the roll. The motion is to reconsider
the earlier motion.

ROLL CALL VOTE: Motion to reconsider was passed
by a vote of AYES: 8, NAYS: 0.

Councilpresident De St. Croix: Now,
Mr. Parliamentarian, if I'm incorrect
here, it seems to me the next need here
is a reintroduction of the earlier
motion for consideration with clear
statement.

Councilman Towell: I think this is a
fair procedure, but I'm not sure. My
feeling was in the beginning, that all
we did was just bring up the same question
again. That could be done on the same
night by anyone just by making a motion.
But I think our procedure is fair. I
don't see any problem with it. I think
we would just proceed and just consider
the question over again.

Councilpresident De St. Croix: Mr.
Ackerman, do you have a motion?

Councilman Ackerman: Before I make
the motion, it's the intent of my
committee I think to meet and make
recommendations so that the advertising
that Mr. Wilson has spoken can be held
to. So I'm not sure what I'm supposed
to do, to table it or delete it so that
we can consider this at the next meeting.

Councilman Towell: I suggest we divide
the question and table part of it.

Councilman Ackerman: Moved that
Appropriation Ordinance 75-4 be
(what is it) separated, voted on
separately?

Councilpresident De St. Croix: Con-
sidered on a divided question?

Councilman Ackerman: That the question
be divided.

Councilpresident De St. Croix: How would
you like to divide it, sir?

Councilman Towell: To consider Parks
and Recreation separately.

\$6,900 is made up of \$4,000 from the Human Resources Department, Services Personal, and Federal revenue sharing trust fund, \$2,900. So the rest of that would not be a request until the decision was made on the appropriation.

Councilpresident De St. Croix: Which category of Services Personal is that \$4,000 from, Martha?

Ms. Sims: Well, out of the eleven the regular salaries and wages. You see that we have money left in there because they still do not have a director.

Councilpresident De St. Croix: Thank you. And then we could . . . does this not present a problem? How can we delete and reappropriate without a tabling motion, Mr. Parliamentarian?

Councilman Towell: We could just withdraw.

Ms. Sims: Could you just not make a decision not to use any of this money until the decision is made on the appropriation. You wouldn't want to reduce any appropriations if you are not going to use it for something else until the time comes that you are going to use that.

Councilpresident De St. Croix: So you're not going to be all freaked out and hassled if we leave \$17,056 floating around if you don't have lined up in exactly neat . . .

Ms. Sims: Oh, I want it left lined up and the appropriation here is now, unless you are going to take it out and use it.

Councilpresident De St. Croix: I was just wondering. You expressed some concern before as to the serious administrative problems this represented for you, having to draw from one budget into another department, and I didn't want to create another problem like that, Martha.

Ms. Sims: I don't think this will be a problem. As Mr. Wilson did say, we had to go through and deduct from their original amount that the Older American Center was getting, what they had already spent and what was going to have to be spent before this was passed and we figured until the end of June.

Councilpresident De. St. Croix: Is there discussion on the motion? The motion is to table Parks and Recreation Department Older American Center until the next meeting of the Council and assume that it will be considered by the Community Resources Committee of the Council.

The motion to table the portion of Ordinance 75-4 concerning the Parks and Recreation Department was passed by a ROLL CALL VOTE of AYES: 7, NAYS: 1. NAYS: Councilman Morrison.

Councilman Morrison: On the basis that the Human Resources Department and this is pretty well tied together, I vote no.

Councilpresident De St. Croix: Do we have a motion for consideration as amended?

Councilwoman Zietlow: Moved to adopt Ordinance 75-4 as amended. Seconded by Councilman Towell.

ROLL CALL VOTE: The motion to adopt Ordinance 75-4 as amended was passed by a roll call vote of AYES: 8, NAYS: 0.

Ms. Sims: What would, or did you do about the reduction?

Councilpresident De St. Croix: It was not reduced.

Ms. Sims: You don't want to admit . . . reduction.

Councilwoman Davis: Human Resources Department reduction?

Councilpresident De St. Croix: Ms. Sims, I believe only a few minutes ago you indicated that it wouldn't bother if we did not reduce and left that money there until such time as the Parks and Recreation Department which it's appropriated to . . . we are deleting the section on the Parks and Recreation Older American Center. Now is that mistitled. Is it not all Older American Center?

Ms. Sims: No, all that is requested to be appropriated is all Older American Center.

Councilpresident De St. Croix: That's the only thing.

Ms. Sims: The reductions are not Older American Center.

Councilpresident De St. Croix: Right. We haven't touched the reduction. We've merely deleted the appropriation.

Ms. Sims: O.K., but I can't reduce this. And if we leave it in here, then we are reducing all these.

Councilpresident De St. Croix: We are reducing all these what? The total appropriation?

Ms. Sims: Her comments were inaudible on the tape.

Councilpresident De St. Croix: Then your motion, sir, and please tell me if I misstate it is to consider Appropriation Ordinance 75-4 as a divided question--to divide a portion thereof from the main body to be--Parks and Recreation Department Older American Center which is to be considered separately from the remainder of Appropriation Ordinance 75-4. Is that a correct statement?

Councilman Ackerman: I like the way you said it a lot better than the way I said it, so I think you've got a correct statement there.

Councilwoman Zietlow: Seconded the motion.

Councilpresident De St. Croix: Does everybody understand the motion and its intent? Appropriation Ordinance 75-4 is stated as a divided question, Parks and Recreation department to be separated from the main body of the ordinance.

ROLL CALL VOTE: Motion to divide passed by a vote of AYES: 8, NAYS: 0.

Councilwoman Zietlow: Moved that the Parks and Recreation section be tabled.

Councilman Towell: Seconded.

Councilpresident De St. Croix: It's been moved and seconded that Parks and Recreation Department be tabled until the next meeting. Is that exactly what you wish to say in your motion? Does that express your full intent of action including referral to committee since that was the original request. I don't want to have any misassumptions.

Councilwoman Zietlow: I assume that . . .

Councilpresident De St. Croix: The motion is to table a portion of Parks and Recreation Department Older American Center and to divide the question, and to assume that it will go to the committee.

Ms. Sims: If you intend to table the Parks and Recreation request for the Older American Center, then you also need to adjust the unobligated balances which we needed for the purposes of the appropriations.

Councilpresident De St. Croix: Can you give us those numbers?

Ms. Sims: Everything that is for the Parks and Recreation Department is out of the Board of Works, and all but \$4,000 of the Services Personal and Human Resources. There would be \$6,900 over and above Parks and Recreation; that part that you're going to make a decision on tonight, the \$1,000 for Council, the \$3,000 for Police, and \$2,900 for Animal Shelter. That . . .

Councilpresident De St. Croix: I'm very confused at this point.

Councilman Towell: We did just now vote on the rest of the ordinance. And I think that really comes under clerical, that the . . .

Councilpresident De. St. Croix: So you're saying the total column doesn't add right now?

Ms. Sims: Well, I feel like this is part of the ordinance. This reduction is a part of the ordinance. I cannot reduce.

Councilman Towell: I'm offering the chair a way to handle this. And that is to say that the necessary clerical changes were assumed.

Councilpresident De St. Croix: It's an addition or subtraction. And that means the numbers don't add right. Does the Council concur with that clerical correction? There were no objections. Thank you, Councilman Towell. The next item on the agenda is number five, Economic Development Commission. I believe we have a report from the Economic Development Commission. Do we have a representative here?

ECONOMIC DEVELOPMENT
COMMISSION REPORT

Councilman Towell: I think you want the report from our committee.

Councilpresident De St. Croix: Yes.

Councilwoman Zietlow: The Economic Development Employment Committee of the Council did meet with the Economic Development Commission on Monday, and we have a committee discussion and a recommendation. However, in the interim, we also have an amendment to our recommendation. Do you want the committee to report at this time?

Councilpresident De St. Croix: I think you could probably give a brief summary of that.

Councilwoman Zietlow: The committee discussion here that is drawn up basically outlines the various considerations to the tennis club bondings. The committee recommends a do pass. However, there is a consideration that the lease guarantee insurance may not be available at this time through the...

Councilpresident De St. Croix: Yes, could you please read the letter?

Councilwoman Zietlow: No, I don't want to read that letter. I don't think that that's right.

Councilpresident De St Croix: O.K., fine.

Councilwoman Zietlow: That's not available to the developer at this time. And the Economic Development Commission has requested that we consider bonding at a further date.

Councilpresident De St. Croix: Do you have a motion then?

Councilwoman Zietlow: I think we can just leave it off the agenda.

Councilpresident De St. Croix: I beg your pardon?

Councilwoman Zietlow: We have no motion from the floor, and I don't think that we need a motion. The recommendation of the committee at this time is not to discuss it, is not to discuss the issue.

Councilpresident De St. Croix: To return it to the Economic Development Commission for consideration?

Councilwoman Zietlow: Just to leave it until the Economic Development Commission has presented it to the Council and has asked to table.

Councilpresident De St. Croix: O.K.

Councilman Towell: To withdraw it?

Councilwoman Zietlow: Or to withdraw it for the time being.

Councilpresident De St. Croix: Do we have a sense of the Council on supporting the Economic Development Commission's request to withdraw consideration of this item? Any opposition?

Councilman Ackerman: Would Dr. Patterson want to speak to that?

Councilpresident De St. Croix: I've asked twice for a representative of the Economic Development Commission. Dr. Patterson, I couldn't see you.

Dr. Patterson speaks from the floor: Well, we went through the procedure to take this to the committee and they have considered it and I think the commission and the committee are favorable. However, this is a financing deal arrangement for the financing and the market changes from time to time have made for some complications. At the last minute, we discovered a financial complication and suggested we'd like to withdraw the whole bill at this time and bring it back to the Council at the time when we have all the arrangements made.

Councilpresident De St. Croix: Thank you, Mr. Patterson. My apologies. I couldn't see you behind the shotgun there.

Councilwoman Zietlow: One thing became clear in the discussion with the Economic Development Commission that there, should this be presented again, there will be a legal requirement for a public hearing which would explain the financial aspects of the proposal. The committee recommends that if this comes up again, that we have a public discussion in the Council meeting at the earliest possible point to discuss the proposal in its entirety.

Councilpresident De St. Croix: I'm not sure what the legal requirement is that you are referring to. If there is a legal requirement, and it wasn't met before, then it comes

before us improperly, there has been no change in the Ordinance.

Councilwoman Zietlow: No, no. I'm saying that we're recommending.

Councilpresident De St. Croix: Your Committee's recommending, I'm sorry. I thought perhaps there was some new information that I was unaware of. The request by the Economic Development Commission is to withdraw at this point. Council agrees to support the request of the Economic Development Commission and we look forward to seeing you again when we have clarification on this matter.

Councilman Morrison: Moved that Ordinance 75-27 be introduced and read by the Clerk by title only.

ORDINANCE 75-27
Motor Hotel Assoc.

Councilman Behen: Second.

Councilman Morrison: Moved that Ordinance 75-27 be adopted.

Councilman Towell: Second.

Councilpresident De St. Croix: It's been moved and seconded that Ordinance 75-27 be adopted. Is there a discussion? Do we have a presentation from the Legal Department that sums this up, or Planning Department? We do not?

Mr. Register speaks from the floor: In 1972, these plaintiffs considered purchasing the land to be used as a site for Motor Motels, and at that time that land did not have the zone classification which would permit such construction. Following these prospective purchasers, (according to the law suit which was later filed) we hired engineers and attorneys to proceed with the details of the plans and the presentation of the request for rezoning of this land so that they could build their motel. That proceeding before the Planning Commission went on quite a long time and that rezoning was actually opposed by many citizens. The Planning Commission voted not to rezone this property. Following that, December 3, 1972, there was a suit filed by these owners of this land against the City of Bloomington and the Planning Commission. And the amount requested in their overall demand totaled \$172,500. The Legal Department through Mr. Owens and myself entered an appearance in opposition to this action. There was a change of location from Monroe County to Lawrence County where the case was approaching a trial and determination. But long before that time, the Legal Department concluded that it would make an effort, if possible, to settle the case. And sometime back, our contact, Mr. Clendening, Attorney for the Plaintiff here, has indicated that the lowest figure they would accept to settle this law suit was \$110,000. I should say that before any negotiations were entered into by the Legal Department with Mr. Clendening stated that no recommendation would be made by the Legal Department to the Council, or to the Board of Public Works, unless there was concluded in the proposal, an offer by these plaintiffs, to cede this land to the City

of Bloomington. The problems that we face, as we see it, was that this case could have been lost (which we didn't know it could be) but it could be lost, and the City would not acquire the land. So what's before you now, is not purchasing land, but considering the settlement of a law suit. Now we don't know what will happen if this case is tried. And no attorney involved in this kind of litigation can try to predict that. I know, as Maggie (Shaffer) very properly pointed out, that punitive damages could not be recovered unless there was an element of oppression, or some such term that was present, or intentional harm. That's true. That's the law. We don't know what can happen if this case goes to a trial. But following these extensive negotiations, finally, as recently as back in March, Mr. Clendening came forward with an offer to settle this law suit for \$75,000 and also deed this land to the City. We thought that in view of the hazards of the law suit, that was an offer than was worth being received and recommended to the City and we have recommended it in writing.

Councilpresident De St. Croix:
Thank you.

Mr. Regester. We don't know what is going to happen if this case is tried. But in case there are any of you now that are going to make the decision, or have the feeling that there is anything fainthearted about Mr. Owens or myself, let me tell you that if your decision is not to settle this law suit, it will be resisted to the absolute limit. And I will also tell Mr. Clendening that now. If you decide not to settle this law suit, then I'm going to expect from every member of the Council and any other member of this City administration, to support this defense in every way that it needs to be defended.

Councilpresident De St. Croix: Mr. Regester, I'm sure that this Council will muster an equal amount of support that you have provided this Council in the past with many of the issues. Thank you.

Councilman Behen: We've all discussed this at such great length that I think that anything, as Mr. Regester said, would be repetitious. I too have strong feelings about this because we have been repeatedly urged by the Legal Department to take this route, and I full well know that the property is not that valuable. But I would hate to think that I would be a part of us having to pay \$172,000 in settlement. If the Council did decide to buy this

property for \$75,000 and be assured that there would be no further legal ramifications, that we do not take the advice that I've heard surface several times that this be made into a roadside park, or held in some way as a recreational area, which is inconceivable to me, the way it lies on such a sheer bluff. But give strong recommendations, if we give the decision that the land be offered for sale immediately on purchase even if it were at a lower price, we're going to take a bath no matter how we go. So I would hope that we would be realistic and assume that the bath be as brief as possible and get out of it as financially sound as we could, even though we have to pay an exorbitant price for it.

Councilman Morrison: I would like to ask Tom Crossman a particular question. Tom, as I understood in our discussion previous to the City Council, this particular rezoning was tabled by the City Planning Commission.

Mr. Crossman: At the last hearing, (this came up about three times in various forms before the Planning Commission) which I believe was August, 1974, there were two votes. The first motion was to approve the rezoning. That vote was five to four in favor of approval, which was not adequate to carry the rezoning. That particular vote resulted in no action. An ensuing vote was taken to table pending the development of a revised Ordinance. At that time, we had before Council, a revision to the limited business zone. We had also a revision or projection that we developed in the ensuing months of the Recorder Zone Ordinance. The motion to table was passed, I believe by close to a unanimous vote. In view of the inaction on the other two Ordinances, this particular case has never been taken off the table. So technically, it's still on the table before the Planning Commission.

Councilman Morrison: In other words, this Ordinance for rezoning is still on the table for the City Planning Commission.

Mr. Crossman: That would be correct, yes.

Councilman Morrison: If that's the case, no zoning has ever been passed on it.

Councilwoman Zietlow: Mr. Crossman, have the Motor Hotel Associates returned to the Planning Commission to ask that it be removed from the table?

Councilpresident De St. Croix:
Excuse me, Mr. Clendening, out of order.

Mr. Crossman: I don't believe so. No, they have not made that specific request.

Councilwoman Zietlow: Have the Motor Hotel Associates come to the Council to appeal this decision?

Councilpresident De St. Croix: Perhaps it would be appropriate at this time to let Mr. Clendening speak as to his client's actions. I wanted to make sure Mr. Clendening had an opportunity to respond.

Mr. Clendening: The third rezoning petition that was filed by Motor Hotel Associates, was tabled on August 26, 1974. At that time, we specifically asked, and I would assume that the tapes would show that we objected to the tabling. I'm not sure that the tabling is valid since we had already been voted down. We had a five to four vote which failed to approve, which I believe had been interpreted as a no vote. At that time, we specifically asked that if the Planning Commission saw fit to hear us again, they inform us that they were taking it off the table. We went to the further meetings to discuss further Ordinances. The Planning Commission never saw fit to take us off the table. This law suit does not revolve around the third rezoning petition. The point of the petition was at that time, hopefully to change the zone to terminate the damages that we were suffering, to stop the running of the loss of use of our property. Our property was taken by you when you adopted the Zoning Ordinance to change the classification of the property to single family residence. It made it unusable. We have taken depositions of your staff which indicated that they agreed that it was no longer usable. That's the point for the taking. That's the time when the taking occurred. The subsequent petitions were an attempt to mitigate damages, if you will, to stop the running of the damages. I'm not accustomed to speaking to the client of my opponent in a law suit about settlement. I'm accustomed to dealing with the attorney that the other side hires, reaching an agreement, and standing by that agreement. I feel it is necessary to speak to you tonight to clarify some of the misrepresentations and misunderstandings that have gone on before. In last Sunday's paper, there was an indication by the headline that Tom Crossman should bear the blame personally for this law suit. I would point out that this law suit was filed in December, 1973 at a time when the Planning Commission had twice (completely contrary to the recommendations of the staff) denied rezoning petitions. That's

when the law suit was filed. The set of facts began when the misunderstanding arose in Mr. Crossman's office. The law suit was filed when an administrative body of this administration refused to follow the advice of the staff or listen to the evidence. That has now occurred three times, and the question of willful and wanton misconduct comes up. It's a petition where even members of the administration sitting on those boards having made recommendations to approve it, voted no with no explanation whatsoever. That's why we're here. Not because Mr. Crossman made a mistake or let somebody leave his office with a misunderstanding. There is one essential fact that's been left out of your chronology also. We have been pursuing an end to the dispute one way or another through the avenue of litigation. It was pursued to the point where we filed for our motion for partial summary judgment in the Lawrence Circuit Court, it was set for hearing on the morning of March 10, 1975. The offer from the City for settlement was accepted by us Friday, March 7. We agreed as part of our acceptance that we would continue the hearing on our motion for a partial summary judgment. We've now gone again two further months waiting to learn if another body of the City will again reject the advice of the staff.

Councilpresident De St. Croix: Thank you, Mr Clendening. I'm sure that I speak for the Council and we thank you for your gracious deviance from normal procedure in speaking to one of the clients, I guess of the Legal Department. I'm not sure that from time to time the Legal Department would like to view the Council as its client, but this evening, the Council has accepted the advice of expert staff twice. In two of those instances, you were representing a client. I hope your batting average is good. Council is not bound by law to follow the advice of anybody. We're elected to serve what we see as the best interests of the people of this community. I believe the Council is trying to do that. Thank you for cooperating with us on that.

Councilman Towell: I'd like to thank you for volunteering to speak. I hope we didn't force you. It seems to me that you said that the problem started with the Council, when it adopted the new Ordinance and new map. That's when you had a residential zoning. And I'd like to point out that we were reviewing the maps for the entire City at that time. We had twenty-three hearings, and we worked very hard on that. The other fact that I think is important is that we knew we would make some mistakes,

and we stated our fallibility quite publicly and gave a special six-months appeal time for any decision that we might have made wrong. So I'd like to point out that the suit was filed right after the expiration of the six months time when we offered a special speeded remedy for any inadvertance on our part, or any mistake on our part. So it seems to me that that's somewhat relevant. And I've been told, (I don't know for sure, but this is a matter of report) that when the Ramada Inn applied for Motel status, they were told that B1 was not the appropriate zone for that by the official zoning officer of the City. They went for another zoning, B3. That's the point that you filed for a rezoning, that some notice has been given of the status perhaps of a motel under the Zoning Ordinance, the old Zoning Ordinance from that time. So it seems to me that as far as damages running or mitigating, that would be somewhat relevant. It makes sense to me anyway. I'd like to make just a general statement. I would hope that the Boards and Counsel of the City would be able to make planning decisions in the best interest of the public with proper advice and not run into law suits; to be able to make the appropriate distinctions. In my estimation, they attempted that. There is not any malice, no unreasonableness about the proceedings.

Councilwoman Zietlow: I would like to ask you again, Mr. Clendening, whether the Motor Hotel Associates did come to the City Council to appeal decisions of the Planning Commission after August, 1973.

Mr. Clendening: I think it was already noted that the initial time (chronology) that you had runs from July of 1972 to date. Mr. Ken Arbon was representing the Motor Hotel Associates, and Mr. Arbon died in January, 1973 in a plane crash. During some of that period of time, Mr. Arbon appeared at some of these hearings and Mr. James Norris also did. At the specific time period when the Ordinances were passed, I don't think we exactly sat around and ignored the fact that it had changed. On June 21, it was passed, and on July 9, we applied for a change of zone. So certainly we were active at that time. We had asked for a change on the B1, B3 question prior to the time that you changed the Ordinance. And it was spread all over the papers. I don't know specifically what meetings, if any, we attended of the Council in fact. They wrote letters to the Council and they talked to the Planning Department. I cannot pin down any one date that they came to the Council itself.

Councilwoman Zietlow: I think it's very important because my understanding of the zoning law is that any petitioner who feels that they have not been treated properly by the Planning Commission has the right to go to the City Council for a reversal of the Planning Commission decision that was responsible for the negative... With a three-quarters vote on the part of the Council, the Council can overturn any decision of the Planning Commission. We certainly went through that time and time again in the course of the Zoning Ordinance. And, therefore, I think it is very important to know if Motor Hotel Associates came to the Council specifically to ask for a reversal of the Planning Commission decision, because it seems to me that if they have not, then they have not exhausted administrative remedies or whatever. They have the option and they have stopped short of that.

Mr. Clendening: Number one, the pleadings on file in the case admit that the Motor Hotel Associates has no other remedy than the one they are now pursuing.

Councilwoman Zietlow: What does that mean?

Mr. Clendening: That means that it is judicially determined that they have no further remedy. Number two, the interpretation of how you go about seeking a review are subject to a variety of interpretations. I'm sure that a number of people have called my office trying to get the chronology straight. I think that there were at least three out of the Council office who have gone through my file to try to get all the facts straight. They have probably written a variety of opinions as to exactly how things ought to be done, so there can be any number of interpretations of how it can be done. To get to the Council, you file your petition with the Planning Commission. The question of whether it is considered by the Council is not something we control, as you can see, on the one we did tonight, if it were up to us to bring it, we'd have been here earlier because we passed in April from the Planning Commission. It then took us a month and a half to get to the Council. The petition was on file. It was never acted on by the Council. We presumed by the fact that it they don't act on it after the Planning Commission that they had no desire to hear us or approve it.

Councilpresident De St. Croix: Excuse me. I wonder if Council members could express their concerns or their specific questions. But I don't think that a legal enjoiner between the representative of the Motor Hotel Associates

and attorneys, and members of the Council as to fine points of the law is going to particularly get us anywhere. Since we've already demonstrated in the discussions that we've had here, that we can cut the law in many ways. But I think that there are many points that Council members want to make on which they are basing their decision and their considerations. I think those are very important, but I don't think a cross exchange as to yes, you're right, no you're wrong, blah, blah, blah, is helpful in this instance.

Councilwoman Zietlow: I respectfully disagree that this is irrelevant to my decision in the matter.

Councilpresident De St. Croix: Oh, I'm not saying it's irrelevant. I'm just suggesting that we not get into an argument as to legal interpretation. That was not directed at any one person in particular. But I see the potential for that developing here.

Councilman Towell: Well, I just learned a fact that seems important to me, that there was already a stipulation that administrative revenues have been exhausted. Is that correct? I'm asking our legal staff.

Mr. Regester speaks from the floor: I would not agree to that at all. Perhaps it might be a strange turn in my overall attitude, but tonight I'm not agreeing to anything.

Councilpresident De St. Croix: Thank you, Mr. Regester. You've made your point.

Mr. Regester: Nor are any of you going to get me to concede to anything.

Councilpresident De St. Croix: Thank you, Mr. Regester.

Councilman Ackerman: It seems to me that one of the difficulties that we're having with this case is the problems that we have had in defining the limited business zone. I think that there are people on the Planning Commission and people on the Council who would agree that the proper use of that land is not single residential, who on the other hand do not feel that upzoning it... The original land was zoned B1, which is limited business who do not feel that upzoning the land to BA or B3, is the appropriate thing to do. And part of the difficulty has been the problems that we as Councilmembers have had at working out the definition of what limited business is. The Planning

Commission has worked it out and sent it to us. As you remember, we sent it back to them, they revised it and sent it back to us. And I'm wondering in the meanwhile, regardless of our decision, if we shouldn't set up for ourselves some kind of deadline and try to work out and come to grips with that definition of limited business. And I hope that I will have the opportunity some days to vote on that limited business zone for that parcel of land if the occasion arises.

Councilpresident De St. Croix: Has the limited business zone question been referred to a committee of the Council? It has. Which committee of the Council? Planning and Community Development. Could we request that the members of that committee work closely with Councilman Ackerman to bring this to a resolution?

Councilman Morrison: I feel as though if this succeeds, I think we are just leaving ourselves wide open. I can sit here right now and think of two cases (I'm not going to say them because they might get the same idea that Gary (Clendening) got). But I can name you two cases right now where the City could be sued. If Gary wins over the City, these people could win easily. So I feel like this, the danger follows any time you rezone land, any time you take away the valuation of a person's property. I'm just afraid that we're setting a course here tonight that will really haunt us for a few years to come. Like I said, right now I know of two immediate cases. If this should be what I've heard here tonight from their corporate counsel, Mr. Gary Clendening, these people have a valid case and there is no way you can beat them.

Councilpresident De St. Croix: Thank you, Councilman Morrison. Further discussion or questions from the Council.

Councilwoman Davis: Well, I think it's almost like playing poker. If I were playing poker with my own money, then I would go to court and take my own chances. But I'm not playing with my money. And I'm very reluctant to say O.K. and lose heavily in court and lose the land, and lose a lot of money that we may win. The decision we've got to make is whether we're going to take the chance or not. And I'm not sure that I'm willing to take such a large chance with the taxpayers' money.

Mr. Marsischky speaks from the floor: I'd like to speak to the point Councilwoman Flo Davis made. As a taxpayer in this town, and viewing this as part of my money, I don't like the idea of getting into a poker game and adding it up with no chance of pulling out a winning hand. While this would not set a court precedent, it certainly sets a precedent in dealing with this type of case. And I would rather fight the case and lose and amend our Ordinances, than to not know what the legal situation is and continue to pay out blackmail rather than fight cases.

Councilwoman Zietlow: Mr. Marsischky said very much what I wanted to say. I think that we are playing poker here with a known quantity here. But I suspect if we go ahead with this, we're playing with an unknown quantity.

Councilman Behen: When you've got Hoyle advising you how the game is played, then we're going to lose, baby.

Councilman Ackerman: Question.

Councilpresident De St. Croix: I'd like to offer a statement as a member of the Council. I too wish we were playing poker because its consequences are a great deal less. I'm concerned that at the same time, that we not spend an unnecessary amount of tax dollars from the taxpayers. I think that the question before the Council is essentially one of those unreasonable situations where no matter which way you decide, you have about as many people angry with you. I believe that the Legal Department has worked very hard on this, and I believe that they in good faith have done their best effort. I feel that Mr. Clendening, representing his client has, and I think that's what the Council's is about to try to do now. It isn't a game, and it's a tough one. I'd just like people to understand the situation before us. Nobody's particularly happy about making this decision, I'm sure.

Councilman Morrison: As a businessman, getting back to Flo Davis' playing poker, you gamble and you lose. We can sit here tonight and concede. I know nothing about the law. I am sure Jim Register, Larry Owens, Gary Clendening, these are three of the finest attorneys you will probably have. But I don't mind playing poker one time with the taxpayers' money. So that's all I have to say. I'm a

businessman and I'll gamble once on a longshot. But to continue to gamble on a long shot is not good business practice and I don't feel that I would be representing my district or the City of Bloomington well if I didn't feel that way.

Councilman Ackerman: Question.

Councilpresident De St. Croix: The question is on the adoption of Ordinance 75-27 which authorizes the purchase of the property in question owned by Motor Hotel Associates of Indiana for a purchase price not to exceed \$75,000. In return, the City will receive the deed to the property.

Councilman Morrison: I'm going to bet on Jim Register. No.

Councilman Towell: I guess I'm betting on the same person with a different vote. I have concluded out of all of this (and I've looked over many many aspects of it) that we are probably in an untenable legal situation. How we got there, I don't know. I think the decisions were made with good considerations and reasonable consideration. And therefore, I'm going to try to cut losses and vote for the Ordinance.

Councilman Behen: Those are my sentiments exactly. We are in a position that you're damned if you do and you're damned if you don't. And regardless of what we say here tonight and which way we vote, all of us will know whether we were right or wrong when those twelve people come out of the jury room if we do have a trial. So I vote yes.

Councilman Fix: I'll explain my vote. This is a very difficult situation. I thought the best way to make up my mind was to talk to as many people as I could talk to. And that's what I've done. And they have been almost unanimous to say, let's go to court. So I vote no.

Councilwoman Zietlow: I'm also going to give a vote of confidence to the attorney, to the legal department. And I pledge to support them as much as I can. I vote no.

Councilwoman Davis: Well, I talked to a number of people too. And I vote yes.

Councilman Ackerman: No.

Councilpresident De St. Croix: The

vote now stands once again at three on one side, four on the other. Thank you fellow Councilmembers. I earlier indicated that this was a very unpleasant task. And despite my disagreement with Mr. Register that he had to demand the support of the Council, I offer it willingly and fully. I believe that Mr. Register has in fact negotiated probably as fair a deal as he could work out on the situation, and I'm not questioning his intent in that regard. However, I do think that the process for correcting disputes of this sort is the judicial system. I therefore vote no. Ordinance 75-27 is defeated by a vote of three to five. And if I can do anything personally, or other members of the Council can, Jim, I'm sure if you just ask us, we will do anything we can to back you up. And I think we feel very confident about your abilities to represent the City's best interests.

Ordinance 75-27 was defeated by a ROLL CALL VOTE of Ayes: 3 Nays: 5
Nays: Councilmembers Morrison, Fix, Zietlow, Ackerman, De St. Croix. Councilmember Mizell absent.

Councilman Morrison: I move that Ordinance 75-33 be introduced and read by the Clerk by title only.

ORDINANCE 75-33
Annexation of Childs' School, Spicewood

Councilman Behen: Second.

Ordinance 75-33 was then read by Clerk Dolnick by title only.

Councilpresident De St. Croix: Could we just have a very brief indication of what this property is here? This will come before the Council at Second Reading.

Mr. Larry Owens speaks from the floor: This is a combination actually of tracts of land that are in three different ownerships. Initially, we had a petition from Mr. Sawyer (tape break)... fairly large contiguous piece of land which is to the South of Sycamore Knolls and Spice Road.

Councilman Morrison: I move that Ordinance 75-35 be introduced and read by the Clerk by title only.

ORDINANCE 75-35
Restricted Parking Zones
Fourth & Washington St.

Councilman Behen: Second.

Ordinance 75-35 was then read by Clerk Dolnick by title only.

Councilpresident De St. Croix: The intent of this Ordinance would be to amend the section of the code called "Restricted Parking Zones", by adding to it the north side of Fourth Street from Rogers west to the first alley that runs north

and south, and the west side of Washington Street from Third Street south to Smith Avenue. There will be restricted parking zones in those areas. There is a ninety day order in effect currently. Next item on the agenda is consideration of the minutes from March 19, April 24, and May 1. Is there a motion.

Councilman Morrison: I move that the Council minutes of March 19, 1975; April 24, 1975; May 1, 1975 be adopted.

APPROVAL OF MINUTES
March 19, 1975; April 24,
1975; and May 1, 1975

Councilman Behen: Second.

Councilpresident De St. Croix: It's been moved and seconded that minutes from March 19, April 24, and May 1, 1975, be adopted. I believe that some corrections have been submitted. And that motion includes those corrections. Is that right?

Councilman Morrison: So moved.

The meeting was adjourned at 10:55 p.m.

ADJOURNMENT

Attest: Nora M. Connors
Nora M. Connors
Deputy City Clerk

Approved: Brian C. De St. Croix
Brian C. De St. Croix,
President, Bloomington
Common Council