

In the Council Chambers of the Municipal Building, on Wednesday, July 3, 1974 at 7:30 p.m., with Alfred Towell presiding.

SPECIAL SESSION
COMMON COUNCIL
CITY OF BLOOMINGTON,
INDIANA

Present: Wayne Fix, Charlotte Zietlow, Sherwin Mizell, Alfred Towell, Flo Davis, Richard Behen,

ROLL CALL

Absent: Jack Morrison, Jim Ackerman, Brian De St. Croix

Larry Owens, City Attorney; Martha Sims, City Controller; Rasoul Istrabadi, City Engineer; Tom Crossman, City Planner; Grace E. Johnson, City Clerk;

CITY OFFICIALS PRESENT

About 30 other people including members of the press.

OTHERS PRESENT

Councilman Towell asked if Councilmembers had read the minutes to June 20th.

Minutes

6/20/74

Councilwoman Zietlow said that she had read them and recalled that she did have some amendments to make but did not bring her copy of the minutes with her to this council meeting and asked that the minutes of June 20, 1974 be tabled. Councilwoman Davis seconded the motion. The motion was carried by a ROLL CALL VOTE OF AYES 6; NAYS 0.

NONE

MESSAGE FROM THE MAYOR

Councilwoman Zietlow said that she had two messages. One is that the Common Council has finally made its final appointment to the Women's Commission, Rosemary Kincaid who is president of the Monroe County Extension Homemakers Club. She has worked in a hospital business office, she has been employed for four years in the accounts receivable department of Sarkes Tarzian. Mrs. Kincaid lives in Stanford and is the wife of Darrel Kincaid who is line foreman for the Public Service Company of Indiana and a farmer and Mrs. Kincaid has been active in the 4-H club and in the homemakers club and is the secretary of Grandview PTA. I think that Mrs. Kincaid will bring to this commission a view point which may not have been represented and I am very pleased that she was willing to accept. Message two: We have an item which is not on the agenda this evening but which I understand will be brought up this evening and that is the zoning or the granting of a building permit and the approval of a site plan of the Noble Roman's Pizza Pub. There has been some discussion among councilmembers as well as elsewhere as to whether or not this was appropriate to be on the agenda tonight. Personally I feel that this is an item of great interest to a number of people in town. I think

MESSAGES FROM COUNCIL-
MEMBERS

there are a number of questions which remain unanswered satisfactorily for many people in the community. Although the City Council has no authority to act tonight on this issue at all. I think that it is an appropriate thing for us to hear and I have spent quite a bit of time on this to get to the bottom that is not quite the right thing to say...finding out exactly what has happen and in what order in this whole business. I feel that we have to have outlined publicly by all the people who participated in the various actions what did happen with the granting of this building permit and the site plan approval. I think there maybe questions which the council should raise, I think there maybe questions which have to be satisfied before the building continues if it does.

Councilman Towell said that since the last meeting I spent some time in San Diego with the Mayor. This was the National Conference of Mayors, it was duly so named while I was there. I met Mayor's from many cities and a lot of other people, a lot of council people who were there despite the name. I found the Mayor's were uniformly sceptical of council people. I was along in a car when they got into a discussion like this and I offered to leave immediately but they said "oh we don't mean you". I heard some very interesting things while I was out there and I have given information to the various members of the council about the community development revenue sharing. There are two types of funding for that program and one is the "harmless" that means once you start a federal program of a certain kind it is important that it be continued and usually the period is five years. We have an NDP program which is the only one in the seven categorical type programs which are being poleless into community development revenue sharing and our funding level is about a million dollars and that is what determines our funding level for the community development revenue sharing for the first of the year will be. The other type of funding for community development revenue sharing is according to a formula and this is called the discrionary funding. I left information about this sort of thing, I am not sure whether you got it yet, but I asked for the information I got at the conference to be handed out to council people. That is on the basis of population first and then need twice and then over crowding of housing is the third factor which is only used once to evaluate how communities will be funded.

Towell

One of the interesting things about this is that it is not competitive. They have a certain amount of money for cities under 50,000 and 50,000 up to 200,000 or something like that. All of the programs that apply will be funded to the extent they can. If the total amount of the funding would result from the applications is less than the amount of money everybody will be funded fully. If it is over by a certain amount everybody will be shaved so it is noncompetitive unlike NDP or any of the other programs. So that everybody is bound to be funded if they present their eligibility first in a letter which indicates their interest and the general type of program they would like to have. When they send in this letter they get 10% of the money immediately and that 10% is to be used to develop the application and since it is noncompetitive this is not probable, it seems to me that it is quite thoughtful of the federal government to arrange things this way. Since applications are the most complicated aspect of having any federal program in the community. There is an attempt to make this less complicated but, you still have to have certain studies of the community in order to have your application accepted. You have to show that you consider certain things which the federal government thinks are basic needs like housing for the elderly, facilities for the poor, for the people who are under the poverty level and that kind of thing which almost every community needs to consider. Well, so you get the money for the application and then you develop the studies that are needed. In general the federal government says that it will not examine the type of programs you have except if you air mightly so that it is really the option of the community what kind of programs you have. Well anyway I heard about these things in San Diego and it looks like they are coming, both houses have passed a bill and the compromise is to be worked out in conference and this should take place by the end of August. The funding is suppose to take place the 1st of January. I take it that this means that we should be gearing up to have a program about the level of our NDP programing ready to go as soon as possible after the first of the year. We were advised by many people who were there to staff our planners, to get together our programming and then we could immediately start working on those things after the first of the year. Of course the first year will be over by the end of June of 75, so we get the regular years funding for six months and we are suppose to do something with it in six months. Once

again requiring that we have done some planning by then. So I would like to indicate that this is coming and it is really not an increase in funding for the city since we have an NDP program but it is wider in concept and we can relate more things we can do more comprehensive planning of how we are going to spend it. We can also apply for discretionary funds if they are not all used up. But we start off with out funding level for NDP. Well, I think, just speaking personally that one of the most important things that I did at the conference was to meet mayors from Indiana and I met most of them. It was not unusual for Indiana cities to send representatives to this conference and indeed other cities had several representatives besides the Mayor. I being the only one from Bloomington. I think a very interesting thing to know is that all of these people are concerned with urban areas and problems speak the same language. A lot of times in Bloomington I know whether I am talking to a democrat or a republican but, at that mayors conference it was not easy because everyday they are faced with the same kinds of problems as every other mayor or every other council. There were only a couple of exceptions to this, there were some ideologs at the conference and one of them was from Indiana but, most of the others were concerned about urban problems and working on the same kinds of programs. I was interested to notice that things we found very hard to do in Bloomington are already being done elsewhere in Indiana. So we have some catching up to do. I am talking about social programming, human resources department or what ever we want to call it. That kind of thing is already being done elsewhere in Indiana certainly across the country. I got a very concrete impression of things that we can do in Bloomington to help make this a better place to live and more enjoyable to everyone of our citizens. I am gratefull for being asked to go to the conference. I have no idea how that happened it was sudden and I went. I saw a lot of things that were interesting and I heard about some things of interest to our citizens. Well, I would have been gaveled down if I did not have the chair.

Councilwoman Zietlow moved that the agenda be revised to have petitions and communications at 8:00 p.m. instead of the usual 9:00. Councilman Fix seconded the motion.

Councilwoman Zietlow said that our missing president had spoken to at least one member of the audience

who is ailing and who would want to speak at 8:00 on a matter of petitions and communications.

The motion was carried by a unanimous voice vote.

Councilman Behen moved that Ordinance 74-47 be introduced and read by the Clerk. Councilwoman Zietlow seconded the motion. The motion was carried by a unanimous voice vote.

Ordinance 74-47
Municipal Parking
Lot #6

Grace E. Johnson, City Clerk, introduced and read Ordinance 74-47 in its entirety.

Councilman Towell explained that on sort of an emergency basis the council allocated 23 spaces behind the municipal building for public metered parking and that turned out to be too many according to a survey of the board of works. We will discuss this at our next meeting at 2nd reading. The proposal is for 14 instead of 23.

Councilman Behen moved that Ordinance 74-48 be introduced and read by the clerk by title only. Councilwoman Zietlow seconded the motion. The motion was carried by a unanimous voice vote.

Ordinance 74-48
Rezoning Van Buren
Township

Grace E. Johnson, City Clerk, introduced and read Ordinance 74-48 by title only.

Tom Crossman, City Planner, explained that some time ago the Planning Commission moved to accept planning jurisdiction over Van Buren Township section 13 as well as Perry Township section 13 and it was concurred on by the County automatically those two township are accepted into the planning jurisdiction in the RE classification. The zoning before you tonight is the Planning Commission's recommendation for a specific allocation of zoning districts within Van Buren Township 13 and if you are going to proceed with the next one it is the same situation for Perry Township 13. There are several zones in the Van Buren Township & Perry Township that they actually end up all remaining in the RE zone but we felt that the action was appropriate to make it an official designation.

Councilman Towell asked if everyone understood that and said that we are accepting two more sections into the two mile fringe and they will be coming in as the RE which is our reserved zone.

Mr. Crossman said that was not right. They have already been accepted in the two mile fringe and that they are now classifying them as the RE zone.

Councilman Behen moved that Ordinance 74-49 be introduced and read by the clerk by title only. Councilwoman Zietlow seconded the motion. The motion was carried by a unanimous voice vote.

Ordinance 74-49
Rezoning of Perry
Township

Grace E. Johnson, City Clerk, introduced and read Ordinance 74-49 by title only.

Councilman Towell said that was the other section we were talking about.

Mrs. Martin said that Mr. Cohen and I represent the same viewpoint regarding this matter of the pizza parlor that they are trying to install on third street. I had hoped that he would be here to speak before me because he represent officially the Greater Green Acres and it was my understanding that he was to speak tonight and I would gladly forego this privilege of speaking first in his favor.

PETITIONS AND COMMUNICATIONS

Councilman Towell asked if we outsmarted ourselves by moving it up.

Mrs. Martin said that you may have. I was told by Mr. Ackerman that we were listed for 8 o'clock so I don't think that you outsmarted yourselves by to many minutes. Mr. Cohen may have been detained.

Councilman Towell said that we will try to work him in when he comes.

Mrs. Martin said that she was very happy to hear, Mr. Towell, that you were talking about what I should call the quality of life for elderly people and for other people as well. I am not sure that the members of the City Council are all familiar with the petition which I wrote and which was signed by 47 people living in the immediate area who would be very adversely affected if that business is to be placed there. I have the petition here and I shall not read it in its entirety. May I assume you know the reasons why we object or shall I read them quickly.

Councilman Fix said that they should be read for the record.

Mrs. Martin said that she elaborated at some length on these things. I will be as brief as I can. We are of the opinion first of all, that an establishment of this type of business will serve no usefull or necessary end. This is zoned for limited business only because back in 1947 when I bought my property there

was a little neighborhood grocery there which did serve a very useful end. There were no grocery stores around and one could without transportation go there and get those needs fulfilled. It was taken over later by Mr. Livingston. Mr. Livingston had a grocery store there and I understand that he still owns the property in question and I read in the paper that he is involved in some litigation about the use to which his property is being put. I don't care to go into that because I don't know. We feel that the only people, this is not a swining community... We have Professor Schmidt mentioned to me today that he would be glad that he would have me mention his name as being extremely opposed to this. I would say that Professor Schmidt lives very close to this establishment, he is in very bad health, he signed our petition and he is one of many elderly people who live in this community who do not want the noise. I have never know a place of that sort which did not have a juke box playing at all hours of the night. The houses are so close together that people simply cannot sleep. That was one point. We feel that it will seriously interfere with the quality of life of the people who made this neighborhood what it has traditionally been. It is not a necessary thing. People may go only about two blocks or less to get their pizza if they want. Our second point is, I brought out in point number two that this had originally housed a small grocery store, then it housed the furniture center, to that we had no objections because it was not noisy, because there was no appreciable traffic difficulty except that the people who parked there parked right out onto third street virtually and you could not see oncoming traffic from the east making it extremely dangerous corner. I hope that when the planner, city engineer was counting spaces available for parking that he was not counting the front of the store because that would make an intolerable situation that we have had there for a long time. We do not know of any other place in town at present which is proposed any place of this kind. You see we have the impression that people have some say in the kind of neighborhood that they want to live in. We are pretty dominantly elderly people, professional people many of them retired professors. I could mention one very distinguished professor who had to move out into a quite neighborhood because he could not stand the noise from the student houses there. And the houses being bought up by speculators and rented to very large groups of students.

We feel that those problems would be great. We also have a very very bad parking situation. It has not been very long since I have had to go out and have the city police come out when I found a car parked on my front yard. Mrs. Stevenson has had that problem consistently for five years. Now these are many of them who were not able to come here tonight to express their wishes but did express them in the petition. We have noise problems because of the dormitories and because of the students who live in houses close by and have no consideration for their neighbors. Another point is the parking which I have mentioned. There is not anything like enough parking space available for the people who live on that street. I heard last Monday night when I was here that the city engineer estimates that there will be 26 parking spaces and that some have been leased from Dr. Manifold. I have also been told that Dr. Manifold does not own the parking spaces that he is leasing and that the owner has objected to their being used in that way. That is something that I think should be very carefully investigated. The owner of those parking spaces of that office building and that parking lot is the Church of the Cross. I am told that the pastor of that church has written a letter of objection on that bases. We constantly have people who are parking on the wrong side of the street. No parking is permitted on the east side of Union Street. We do not get very good cooperation from the police when their attention is called to it. We also have difficulty parking situation on Byron Street and on 5th Street and on 4th Street. Cars park on both side of the street on 4th Street in such a way that it would be impossible for a car or truck to get through. Now these are all concerns which I think need to be taken into consideration. The problem of traffic congestion at this particular corner is very very bad and it cannot be made anything but poorer. This will become worse as more and more people come in. I do not agree that this is going to be simply a walk-in business. It is on an arterial street and people will stop there cars and park and go in. To come back again to the parking facilities that are offered at that spot, I cannot see how unless the Third Street side is used how it will be possible to get 23 parking spaces there. It is my understanding that the original permission to use this in this way, which comes under the city planner's office or the city engineer's office, was given for a place with 32 spaces. I should like to see a statement from a qualified person, a signed statement

from a qualified person, that there is room for even 23 spaces to park there. That certainly cannot be more than that and they cannot fall back on Dr. Manifolds I am quite sure. We have a very great difficulty in this neighborhood with regard to trash. I have been for many years an agile of the cities street cleaning department. I go out I pick up beer cans, soft drink cans, paper cups, straws, cigarette packages, I am sure that the garbage man must think that I am an enormous consumer of beer and soft drinks although I don't use either one. Other people are having the same difficulty and that is with the fast food chains we have now. What will it be if this place is permitted to go into operation and we have more of that. I don't know. These are all things that have to do with the quality of life and that is a thing that I consider extremely important. The whole thing is do we or do we not have any say about how our community is to be changed. Several years ago I found that the original plan had been to rezone both Byran and Union Streets, take them out of the one family residents. Mrs. Sidlow urged me to write a letter to the city planner at that time Mr. Dan Carlof. I did not receive any response to that letter until Mr. Crossman wrote that because they had received numerous complaints from people in the neighborhood they had decided not to rezone it. For that I was very grateful. But there was one little thing in this that gave me pause we much not try to change the life style of people. That goes as well for the residents who have been the bone and muscle of that neighborhood and who have made it the good neighborhood that it is as for the young people who are occupying these houses and are giving us so much difficulty and for the difficulty we would have if that were made a pizza parlour. I asked on Monday night when I came to a meeting and made a presentation I would like to know the chain of command. I should like to know how petitions are handled, who is suppose to get them, who is suppose to act on them. I think that is really the nub of the issue. Because our petition was in by the middle of April we did not know anything about this thing hadn't been granted. We hadn't been told that we would have opportunity to express ourselves in a public meeting, that opportunity was never offered. So far as I know I was confined in the hospital for several weeks. Nobody knows whoever called the meeting or when it was called or anything about that. We feel that we have to have a hearing on this. I was talking this afternoon with a woman whose husband is a university professor who wanted to buy property in this neighborhood because they liked it

very much and they decided that it was simply just to risky. They moved out to Parkridge and she told me this afternoon that they are having troubles in parkridge, they are having troubles in Elm Heights, they are having troubles in the East Side Association, this is a city problem and we need to know how to handle it so I wish to be informed as to how one approaches the city government who handles these things in my own opinion there is no excuse for trying to rush through zoning, I mean building permits, these things must be considered carefully and they must be considered through the proper channels and that I do not know and have not been able to find out. I asked about it last time, On Monday I did not get any kind of answer. I had gone down to the city engineers office at the time when the petition was written. Incidentally I wrote this on the 23rd of March and it was taken in to the planners office not later than the 15th of April. I am told it was probably the 27th of May before the building permit was issued. Work had already started long before that. There is every reason why Bloomington should require a waiting period otherwise we are going to be confronted with mushroom growths that we cannot get rid of. I was told by Mr. Cristy that they were with us, that they would help us as much as they could and suddenly we are confronted with something that we do not want and we feel that we should not have to put up with. I know people who are moving out of Bloomington who thought they had sold their house, almost the first house behind this place, they suddenly found out the deal was off. A great many people are trying to sell their property and get away from the place. It is going to decrease property value and that is a pretty big price to pay for those of us who have lived in security and want to continue to live in security. We don't want to go into homes for old people. We want to stay in our own homes where we have a right to peace and quite and serenity. I hear a law suit has been filed against the pizza people by the owner of that property. I don't know what that will do to this situation. Why has there not been an injunction until these problems are solved. They have to be settled we are not going to sit by and let things run. I can assure you all Bloomington is watching you, the city government, to see how it disposes of this problem which should not exist. I think the nub of the issue is the fact that permission was granted to build there without the planning departments knowing that the additional parking offiered by Mr. Manifold did not meet the requirements

of the ordinance which was passed by this city administration. The ordinances are the laws of Bloomington under which we must all live. I try to observe them and I think we have every right to expect every official in the city to observe them just as we try to observe them. I have known people who have gone to hundreds of dollars of expense to make sure that any building they wanted to build was not illegal. I object strongly to this particular set up where the thing has gone on and on and on and we are confronted now with a very bad thing. Now Mr. Najam told me that the city may have to pay if this thing is reversed the city may have to pay the charges that the pizza people have incurred. To Bad! To bad for the city!! To bad for the tax payer!!! I think it is a principle of justice, I know it is a moral and ethical principle if one has made a mistake one has to do its best to rectify it. I am much interested in the quality of life in Bloomington. We must not allow that quality of life to deterioration. I strongly urge that the city do something to get this thing settled, settled fast, and issue an injunction if necessary. We very deffinately have some legal backing for the stand that we take. The permit should never have been issued. I don't think that any private citizen should have to indulge in litigation to force the city government to act in a responsible and legal manner. That is not right.

Mr. Donald Coan read the following statement: This Common Council and this audience are probably aware of the statement I made to the Plan Commission on Monday evening July 1st on behalf of the Greater Green Acres Neighborhood Association regarding the city planning department's approval of the development of a Noble Romans Pizza restaurant on the corner of East Third and South Union Streets. Tonight I am speaking in my own behalf, as a citizen of the community, although my views may significantly coincide with those of residents in the Green Acres neighborhood. My purpose this evening is to reconstruct, to the best of my ability, with the facts and knowledge in my possession some of the crucial events in this matter and offer an interpretation of the problems which lie before the city and the community to resolve in the future.

The first even in my reconstruction begins approximately one to two week sbefore March 27th, when the EAside Neighborhood Association was alerted in local newspaper article of the controversial liquor license permit granted by the Alcoholic Beverage Commission to Noble Romans. The Eastside Association shortly after contacted the City Planner and voiced concern about but not opposition to a restaurant of this type near their neighborhood. Mr. Crossman, as I understand it, invited

the Eastside Association to submit their concerns in Writing. A letter was sent to Mr. Crossman and a copy to Mr. Hughes, the owner of Noble-Roman, which contained in essence a list of stipulations to which that Neighborhood Association expected compliance in the site plan. These suggestions made by the Eastside Association were received by the Planning Dept. before Mr. Hughes had even submitted his own plans. These suggestions were considered and most or all of them were adopted as part of the final site plan. The Eastside Association was gratified that the Planning Department and the owner of Noble Romans demonstrated a sincere and cooperative attitude.

On March 27th the Greater Green Acres Neighborhood Association held a meeting in which a representative from the Eastside Association was present to express their concerns about the Pizza restaurant and essentially reiterated what I have just described. Also present at that meeting was Mr. Gary Knachtstead, a co-owner of Noble Romans and a resident in Green Acres. He explained the reasons for the proposed relocation of his business, described some of the details of the new site plan, and delineated several unknown and potential difficulties in leasing the building.

Because of the nature of the discussion which took place at this meeting, it seems reasonable to assume that the site plan for Noble Romans was not yet approved, or else there would have been no reason for Mr. Knachtstead's presence at the March 27th meeting.

On April 10th, a letter was sent to the City Planner from the Greater Green Acres Association reaffirming the concerns expressed by the Eastside Association in March, and asking two important questions about the zoning requirements for business in a BL zone classification especially with regard to carry-out businesses and to parking facilities:

No reply to these questions was made by the City Planner until I was able to contact and speak with him some 8 weeks later on the telephone.

Around the middle of April, as the sequence of events continues, a petition was circulated, or had been circulated some days earlier, that was presented to the City Planner in person. The petition essentially opposed the development of a restaurant operation at the location in question, and some 40 residents in the Green Acres Neighborhood were signees of this petition. Like the letter of April 10th I have described, this petition was totally ignored by the City Planner, and to this day we have no knowledge of its whereabouts.

On July first, 3 days ago at the Plan Commission meeting, Mr. Crossman contended that the approval for the site plan of Noble Romans came sometime after March 27th and before either my letter of _____ or the petition had arrived in his hand, although the exact date of the site plan approval has not been publically recorded and verified.

Before or after the Planning Department had approved the Noble Romans site plan, perhaps within its authority, although this is still a question to be answered in my own mind, the problem of meeting parking regulations was considered. According to figures generated by the Planning Department staff, on-site parking facilities would not be sufficient to meet the legal requirements in a BL zone for the size building structure. Only a few more spaces were needed. Noble Romans then decided

to go across Third Street to lease a small parcel of land to expand their parking area for patrons, thereby hoping to meet the legal parking standards set down by the zoning ordinance. But, that parking area across the street was located beyond the minimum required legal limits in relation to the proposed building structure. The entire Noble Romans enterprise, indeed, was in trouble. The Planning Department had issued figures which in effect said, there is not enough on-site parking space to comply with the zoning ordinance; by mistake of the Planning Department, the land across the street was just too far away. And furthermore, the site plan had already been approved. How could this dilemma be resolved? How could the City Plan Department justify the site plan approval decision? Very simply--let's have the City Engineer recalculate the "usable" floor area within the building structure, and then generate new figures on parking requirements so that these become the new legal standards which to no one's surprise, now not only meet the minimum requirement set down by the zoning ordinance, but shows a surplus of 2 or 3 spaces. In effect, the City Planning Department and the City Engineering Department were at odds over the parking problem, and then colluded to serve a prior decision that it was in their best interests to justify and protect. In my opinion, if this argument I have presented is plausible and true, there is clearly a violation, possibly of the law, but certainly of ethics, good judgment, and fair administration of government.

The final even in my chronology. On July 2nd, one day after the recent Plan Commission meeting, Mr. Najam, Administrative Assistant to the Mayor, convened a group consisting of Mr. Istrabadi, the city engineer, Mr. Crossman, city planner, Mayor McCloskey, Mrs. Zietlow, a member of the Plan Commission, and a legal councilman for the city. In short, Mr. Najam reported to me on the evening of July 2 that this group had reached consensus or unanimity that the City had not violated any laws in connection with the Noble Romans issue. I should point out, that while I do not believe Mr. Najam would deliberately misrepresent his perception of the conclusion of that group meeting, Mrs. Zietlow feels she would not be represented fairly in that consensus; for the record, it might be more accurate to say that the group reached at a consensus minus one.

These are the crucial events in this matter, as I personally view them, and should not be construed as representing anyone else's thinking on this matter. After all this, it is my opinion that the city has taken all necessary steps to use the law, and will continue to do so, in order to violate another law. The city planning department, in particular, has attempted and may have succeeded, in complying with the site plan review procedures and in exercising its proper authority to carry out the obligations vested in that agency although these points are debatable, but in the final analysis the decisions which have been made have led for to the approval of the development of an illegal business enterprise on the corner of East Third Street and South Union, and in the process the Plan Department and its supporters the city government, have shown themselves to be incompetent, disorganized, insensitive and unresponsive to citizen input. In my opinion, the questions of parking at this site, and the legality of carry-out business in this BL zone category are still not resolved.

The conflict between Noble Romans and Greater Green Acres is merely a skirmish that might have to be fought in the courts of legal judgment, but the real battle will be waged in the court of public opinion where it will be seen that the platform of open, responsive and fair government on what this administration ran was political trickery rather than genuine leadership.

Councilman Behen asked if the Council was going to be allowed to discuss this particular thing here tonight or is it going to take a special hearing or if so I have some comments I would like to make.

Councilman Towell said that it is his view as to the way things are run that most people have a chance to say something at the relative time if that is possible. This is not something that is on the agenda for a decision tonight. In fact in the site plan ordinance which this administration passed the review board on site plans is the Board of Zoning Appeals and that is the next logical step to protest the site plan approval. At one time the council was willing to because it was a novel kind of ordinance that we were passing, willing to accept review of all of the decisions but we were instructed that the more proper procedure was to go through the Board of Zoning Appeals. That was the general structure of planning the laws in the state. So at the present time we are not the decision making body on this. However Mrs. Martin had some questions that I hope we get to answer.

Councilman Behen said that he would like to asked the legal department interpretation after people are through speaking if we have arrived at a situation which most councilmembers and myself felt when Jon's Hamburger on White Hall Pike it was Just Rite Hamburger was put in the front yard of the St. Johns Apostles Church and we found ourselves in an absolute impossible situation to illeviate or change the decisions that had already been made and they were allowed to build directly in front of the church. Was there a petition filed when the much large traffic generating business was constructed commonly known as Forest Quad.

Mrs. Martin said that she cannot answer that question about Forrest Quad. I don't know, but, I know there has been. I assume, Forest Quad. that is the one that fronts on Third Street, well I have been told that evidence was introduced on Monday night that Mr. Clendening has objected in the name of some real estate owners, somebody who owns property on E. 3rd Street to the fact that his client that has been refused permission and permission was granted to the Noble Romans. My understanding was that that was on the basis of parking and the statement was made to me I have not seen the document

that there might be a suit against the city. The more of these things that pile up the more trouble the city is going to have. Now I don't know about that now when did you say.

Councilman Behen said whenever Forrest Quad. was built. I was just curious.

A member of the audience answered Councilmen Behen's question he was inaudible on the tape.

Councilman Towell said in response to the member of the audience that we still do not have such controll

Mrs. Martin said that I think we need controll over all property in the city as far as I am concerned.

Councilman Towell said that we happen to agree with that.

Mrs. Martin said that she looks upon the university as our adversary in many of these problems about sections of the city. When Wilke Quad was being built, right across the street from me, my yard was being used as a parking place. I appealed to Mr. David Durge, who was my councilmen at the time, he said go to the city council with it, I will support you fully. I came to the city council ably seconded by people who were having the same difficulty. I was commended for my good citizenship in bringing this to the attention of the city council and several members of the council commended me for my good citizenship in doing this thing. The next morning the city engineer came to my house, it was not the city engineer it was the man who deals with the street department, I had provided myself with kodak pictures which I had taken of cars illegally parked. I took the pictures in such a way that the license numbers of the cars were visible. I passed those around the council and I was assured that something would be done. The next morning Mr. Sergent came to my house. He looked the place over. One of my friends had said that they have done \$1500 worth of damage to your property. Mr. Sergent looked the place over and said that he certainly wouldn't want that on my place, we will do something about that. About a year later I called him and said "Mr. Sergent how about that work that you promise was going to be done," he asked for the name and the number of that place. To this day nothing has been done. This is the kind of thing that I think this city administration should avoid.

Councilman Mizell said that there was a question about the proper agency for the judication of this particular petition. I might point out that Monday when the people appeared before the plan commission

they were following the proper line of petitioning and on their way to the Board of Zoning Appeals. However at that point one of the newspapers quoted it as a bombshell was dropped and that was the city engineers report that not 32 parking places were required but only 26. If that is accepted, and I for one will take exception to it, this would rule out any appeal before the board of zoning appeals. I would then coincide with the requirement and number of spaces available. So if the city engineers figure is accepted these people have been effectively denied any appeal the board of zoning appeals could level.

Councilman Towell said that he would have to disagree with that because it seems to me that one of the things that you can appeal if the finding as to what the requirement is. So, I think that they can go to the Board of Zoning Appeals anyway. What I want to see is that the actual standards of the law be followed and that the facts meet with those standards.

Councilman Mizell said that they could appeal the agreement with the site plan itself.

Councilman Towell said that is right.

Councilman Mizell said but not the parking.

Councilman Towell said that they could appeal both as far as I know. Anyway I am sure that will be worked out.

Councilwoman Davis asked when was the site plan approved. Did building start before the building permit was issued.

Mr. Crossman said that the formal site plan was submitted as a portion of the request for a building permit which the engineers office records as being applied for on the 29th of April. It was submitted to our office for review the week following that. The only discrepancy in the site plan as it came in at that time was a discrepancy in the failure to provide details in the land scaping materials. The developers submitted those details shortly after that so I can only say that the site plan was formally approved at the end of the first week or the beginning of the second week of May. I don't know if we have an exact date on it if the building permit form that we submitted back to the building inspectors department has the date on it then that would be it. But it is depended upon how long it took the developer to get the details of his land scaping in.

Councilwoman Zietlow said that first of all I would like to say that the representation of a consensus at any sort of ad hoc meeting that was held yesterday is something that I had no part of. I don't think that there was anything like a consensus I think it was a matter of information getting. My sense was that there was going to have to be a presentation of a great deal of material before we were finished with the matter. I do not think there was unity even minus one. I certainly agree that it would have to be at least minus one but it was probably minus more than that. I have a question which I think we have to settle and that is how many times were the required parking spaces defined. How were the various definitions arrived at and in what order.

Councilman Towell said that we now have a number of questions which are pending. Would you like to answer that Mr. Crossman. I have not forgotten Mrs. Martins original questions.

Mr. Crossman said that the original plan, I am not talking about the plan which came in for final approval but the plan that Noble Romans submitted to us for discussion, showed an outline of the building and on that basis we provided them with the information that it was our belief that 32 spaces would be required. This was not recalculated until the engineering department had an opportunity to review the working drawing and the construction drawings that are submitted with an application for a building permit. At the time we advised them that the 32 spaces were required we did not have working drawings.

Mr. Coan said that he was really amazed that the city planner is unable to provide us with information concerning the date of the final site plan approval. In a sense I am pleased I am wrong about the chronology that I gave earlier if it is true that the final approval was granted during the first or second week of May the petitions were submitted definitely before that time and they were ignored. So that does strengthen our argument.

Councilman Towell said that he would try to answer something that Mrs. Martin asked if I am wrong we have a number of experts in the room. That is the reason for having a site planning ordinance is so that zoning can be correct that we don't wait to see what is going to be put in a particular zone before you zone it that way because you have some guarantees of quality and this is the ideal, that go along with anything in that zone which will protect the other residents and the citizens of the city. So we have separated performance standards within a zone from the zoning itself, at least this was the idea. Developers would be much happier with this because they would have the zoning and could

look for funding for worthwhile projects and yet the residents and the immediate neighborhood would be defended because there would be standards of how things would have to be. A plan would have to be submitted in conformance with these before anything could be done, before a building permit could be issued. It use to be if the correct zoning was there then a building permit could be issued at any time. The site plan ordinance specified that the plan commission would review site plans, except for ones which were considered to be small enough that they could be routinely done by the planning department. Any major project was to be reviewed by the entire planning commission and appeals from those decisions would go to the Board of Zoning appeals. I already mentioned that at one time it was to be the city council, but that was changed after legal advise. The criteria of what would be delegated to the plan department included the specification on only one building, in other words it was larger projects with more than one building that were considered to be ones that would have to come before the plan commission. That is one of the things in questions after this experience as you might well imagine. The delegation of a power like this is legally a very sensitive thing. It has to be done explicitly and carefully. I don't know if that has been done properly. On the other hand the ordinance does say that certain projects shall be routinely reviewed by the plan department which I think is a reasonable proposition if we canonly get the category right. So, that is my answer to your question as to the situation of a review of a system like this. First of all it is a decision of the plan commission and for certain categories they have delegated this to the plan department and I think myself that there is a defect that notice is not given evidently or is not required when this kind of decision is made in the plan department. It is basically a plan commission decision which has been delegated if it has been delegated properly. Then the appeal is to the Board of Zoning Appeals. I would take it that in this administration anyway that we hope that citizen input would be as effective with the plan department as with any other part of city government. So, if your petition went to the planning department it went to the agency that evidently that was to delegated to make this decision in this case. It may be that the ordinance should be revised so that when there is remonstrance the plan commission itself has to have a public hearing. You certainly remonstrated, evidently in time, so.

Mrs. Martin said that Mr. Jones whose wife carried the petition, the petition was dated the 23rd of March.

Mrs. Jones whose husband brought the petition to Mr. Crossman is out of town and cannot be here. But I am told by Mrs. Jones and her husband that it definitely was in before this thing happened. The question is of this Board of Zoning Appeals you know the next meeting of the Board of Zoning Appeals is on the 25th of July meanwhile construction goes on. Why can there not be an injunction that will stop this. The city will save itself and me some money by taking care of these things in proper order. There was plenty of time, I was in the hospital, I knew nothing what so ever about this business until I read in a letter of the editor. I wrote a letter of commendation to the mayor because of his decision to take a hand in the control of the animal control business and I had a reply from him that he was so glad that I wrote, please feel free, we want citizen input, alright the citizen input did not get very far. I should like to know if there is some way of resolving this thing before it has gone too far. This thing should not drag on for months. Fortunately Mr. Jones had kept a xerox copy of our petition with the signatures and when he appeared before the planning board he had copies of this made for the members of the commission and they evidently were flabbergasted because they had not heard of this before.

Councilwoman Zietlow said that she had a very specific question. When the petition was brought to city hall to whom, to which person was it handed in which office.

Mrs. Martin said that according to Mr. Jones it was handed to Mr. Crossman and the statement was made that in view of the fact that there was a remonstrance that there would be a public hearing held. Nobody knew anything about such a meeting. According to Bill Jones it was handed to Mr. Crossman and now I can't answer the question any further than that.

Mrs. Bernhardt said that Councilman Towell said that he had delineated the way things work in this ordinance and Mr. Mizell. One member of the planning commission told me as long as the planning commission decides on a decision like this the public knows and the public comes in and then the public can go to the board of zoning appeals but the planner can hand out permits from his department the public never hears about it and we cannot in fact go to the board of zoning appeals either because you don't know or perhaps because the law is written in such a way that you can only go to the board of zoning appeals about things the commission has decided upon. When the commission does not decide but the planner decides

you cannot go to the board of zoning appeals and that is the concern of ours.

Councilwoman Zietlow said that cannot be right because that is a planning commission decision which has been delegated to the planning department. That is still their decision.

Councilman Mizell said that there is an important difference there though. The planning commission makes its decisions in public and it votes in public. There are building permits which are issued which no one would know about unless they saw the structure coming up and the permit is issued. There is no way for the public to know.

Mrs. Berghardt said that it seems that in this case and in future cases the public always faces the problem of coming in after the fact and always getting the answers that they got Monday night. That this building is already being built we cannot possibly stop it, it would be illegal to stop it. It may have been illegal to grant the permit we don't know but it certainly is illegal to stop it. If that is to stop I think maybe we should look at this procedure.

Councilman Towell said that he certainly agrees and felt that he said about the same thing. I do believe the appeals should be before the board of zoning appeals is relevant to any such decision.

Councilman Mizell said that once you know about it.

Councilwoman Zietlow asked Mr. Mizell and Mr. Istrabadi at which point did the plan commission start looking at petitions for building permit and at which point is it the planning dept. and engineers decision.

Councilman Mizell said that he would have to give you two answers: 1) the legal one and one the practical one. Legally if the zoning project contains two or more structures, originally the site planning ordinance included all structures except those covered by a sub-division regulations however at the request of the city engineer the plan commission approved a resolution which was then remanded to the city council which would give the city engineers office jurisdiction over structures over building projects consisting of one structure only. So that the planning office and the engineers office could in essence approve these more rapidly so that they would not hold up construction.

Councilwoman Zietlow said that this covers commercial as well as residential structures.

Councilman Mizell said commercial structures essentially. The site plan was approved originally April 27th, 1973 and the amendment was approved June 10th and that was remanded to the city council at the request of the city engineers office. Now in fact there have been several commercial single structures which have been brought to the attention of the plan commission for site plan approval. This was at the descresion of the planning office and the engineers office. So it has not been consistently followed.

Councilwoman Zietlow said that the planning department could bring any planning up before the commission.

Councilman Mizell said that if they felt that at any time there was a site plan which required review by the entire plan commission and the necessity for a public hearing they would have had no problem at all in getting it on the agenda.

Mr. Jerry Marcinski said that following this same point a little bit further down this line we have Mr. Crossmans testimony both Monday night and tonight that there is no date of action and if I am not mistaken there is a time limit on appeal base. I can only appeal within a certain time limit after the action, if there is no date of action then there is effectively no ability to appeal. That in itself is a violation of the ordinance.

Councilman Towell said that sounds reasonable to me. I don't know what the situation was.

Councilman Mizell said that he did not have a copy of the ordinance with him. But I believe that it requires an appeal within six days after the issuance of a building permit. At this time I would like to ask the city engineer when he issued that permit.

Mr. Istrabadi, city engineer, said that the first time that the application was filed with my office was April 26, 1974. At that time we told the applicant that we could not review his application at all until site plan had been reviewed. So automatically since then he started to go to the planning dept. in order to get approval for the site plan. Now later March 31, at 3:00 in the afternoon, I have the official record of everything that was sent to the planning dept.

Councilman Mizell asked if you mean March 31 or April 31.

twenty-two

Mr. Istrabadi said March. The applicant came with their new site plan that was approved by the planning dept.

Councilman Mizell said that you said that the original application in your office was April 26th.

Mr. Istrabadi said yes but without site plan review.

Councilwoman Davis asked then how could you have the site plan in March if the original one was in April.

Mr. Istrabadi said that he meant in May. It was May 31 at 3 o'clock that we sent the final plan to the plan dept. for approval. On June 4th I got the approval of the planning department back to my office saying that everything was all right. The very same day we issued the permit which is June 4, 1974, and this is the history of how the application was first submitted and how it was approved. I would like to emphasize that on the 5th I had several telephone calls and I would like to refresh Mr. Mizell's memory to that you called me to didn't you Mr. Mizell asking if such an application for a permit was issued.

Councilman Mizell asked what the date was.

Mr. Istrabadi said that it was the next day which was the 5th and I told you yes it was am I wrong or right.

Councilman Mizell said that he did not remember the day but he did remember calling his office.

Mr. Istrabadi said that he must have answered this to about six people.

Councilman Mizell asked if he could read the section regarding appeals.

Councilman Towell said yes if it is quick.

Councilman Mizell said that "any person feeling self abuses at any action of the commission finding of purpose development of planning. Apply in writing to the Board of Zoning Appeals within five days of the decision of the plan commission or the city engineer prior to its regular monthly meeting. For modification of the action, complaint and such application shall be considered by the board of zoning appeals at such time and at such manner as it may determine. No permit shall be issued by the city engineers office prior to the termination of the five day appeal period." So the permit should not have been issued until the 9th or 10th of June according to this ordinance.

Councilman Mizell said that after the decision to issue the permit which I understand the city engineer said occurred on the 4th of June. According to the site plan ordinance there has to be a five day appeal period and it states here that no permit shall be issued by the city engineers office prior to the termination of the five day appeal period. So I question whether or not we ever had a legal building permit issued.

Councilman Towell said that another statement that you made surprised me and that was that there actually was a resolution delegating authority to the planning department. I don't believe that ever happened. So I think another fact is wrong that you mentioned.

Mr. Istrabadi said that he does not believe that there ever was a resolution in the planning department. I came personally to the city council and it was upon my request that I asked for the amendment. It was in a work session that I brought it up to the attention of the Plan Commission and on their approval I took it myself to the city council and asked for that amendment. So there was no resolution.

Councilman Mizell said from the planning commission itself.

Mr. Istrabadi said yes.

Councilman Towell said now whether that is a necessary legal step for the making of the decision in the planning department is something that I am not qualified to say.

Mr. Istrabadi answered that question but his voice was inaudible on the tape.

Councilwoman Zietlow said that the site plan ordinance has to follow the same procedure as the zoning ordinance. It is like any other ordinance it can be generated by members of the council. This was an amendment to the site planning ordinance. Is this the section that really does make it possible for the engineer to issue the permit in any development which does not require new streets or drives or access to the proposed structures or not more than two structures are proposed to be built it was so recommended by the city engineer the secretary to the planning commission may issue a certificate in compliance with the site plan ordinance. I think that is where the authority is delegated.

Councilman Mizell said that is correct. I guess that is June 6th of last year.

Councilman Pix said that he thinks there is quite a problem involved here. One is the fact that it would seem like everybody

is damaged to a certain extent. Everybody in the neighborhood, the business man who is trying to develop. It would seem to me that the way things were developed our site plan ordinance the review section of it is impossible. If nobody knows what is happening how in the world can you object. There is no recourse or review or anything there. Some way or another that has to be changed. I don't know how that can be changed unless it is required that notices be sent out by several offices before anything is done. Now this is a little bit of a nuisance but it is something that is necessary. I think possibly the intent of the ordinance has been violated. If the city department is able to determine square footage in almost any manner that he chooses to do so then square footage in the ordinance means absolutely nothing. Maybe that square footage in the ordinance needs to be spelled out exactly what is to be measured and then what has to happen to parking in the adjacent areas. I think also, that Mrs. Martin I whole heartedly agree with her, when the city makes a mistake the city should recognize it. The city has made a mistake and I think it is time to admit this and I don't think there should be any problem at all in trying to reduce the amount of damage that occurred to a businessman that is doing everything possible to do what the city told him to do. Maybe it is an unworkable thing that we are trying to get done. I think we need to attempt to spell these things out.

Councilwoman Zietlow said that we keep running into things that should be changed in the zoning ordinance and the site planning ordinance recently. Just to support you I think that probably the intent of the ordinance has not been properly adhered to. The paragraph after the one I just read is "for any development requiring new streets or drives including more than two structures or having significant sewage drainage soil or topographical problems the plan department shall forward a report and recommendation to the plan commission which shall review the site plan at its first regular meeting" it seems to me the intent there is for the planning commission to deal with problems that are going to be significant to the neighborhood and to the area surrounding it and I think probably one thing we have to do very quickly is to amend this to include the kind of consideration that the neighborhood had in this particular incident. If there are problems involving traffic and all of the various things, parking, sanitation, noise and etc., problems that were of great concern to the neighborhood that these automatically go to the plan commission for review which will make it a public review. Right now

we have a specific problem and I think we should try now before it gets to much later to deal, to figure out what the council can do at this point and to do it.

Councilman Mizell said that it probably occurred to late to be placed on this particular agenda but the plan commission did approve a resolution for a proposed amendment to the site plan ordinance which will include the language of the purpose in the approval sections. In the future, if this council approves it, the purpose will be in the approval section and such things as adequacy of parking facilities and etc. will be brought to the attention of the planning commission.

Councilman Towell said that one thing about purposes stated in the rest of the ordinance they indicate intent and they indicate how to read the rest of the language but they are not operative items in the ordinance. It looks as though we put more in the purpose then we did in the ordinance.

Mrs. Martin said that there is one thing that I don't understand and that is why permission is granted to the planners. They do not require if there is a single structure that this go through proper channels. This seems to be extremely arbitrary. I can see if it is a great big development yes but you can have problems as we have with one structure. I see no reason for making that distinction between one structure and two structure

Councilwoman Zietlow said that her and Councilman Mizell's point is that they see these deficiencies.

Mrs. Martin said that she thinks that the ordinance just has to be rewritten. There have to be safe guards put in. I am going to suggest to everyone that I know in order to get around this hassel about when the objection was made that they carry the thing into the proper office by hand and require a signed receipt.

Councilman Towell said that sounds like a reasonable administrative procedure.

Mrs. Martin said that one of the key words in the ordinance was the use for the structure. It was my understanding that they were trying to take out the kitchen. I know that was involved in the discussion monday night. Without including the kitchen heaven knows how you can run a restaurant without a kitchen. Without the rest rooms, which I think are required by law, without the refrigerator, heaven knows you cannot run a place like that without a refrigerator, without the heater,

without partitions, I am told that may be the why they arrived at this lower number of parking spaces that were required. My understanding was that permission was granted on the basis of 32 parking spaces. Now it has been figured down to 25 or so.

I have heard the statement that we have more than we need. I am told by a man who has dealt with such things that the accepted practice is to take the deminsions of the building and use that as a basis for the requirements for the number of parking spaces. I would be interested in knowing if that was the way in which suddenly this was reduced from 32.

Mr. Crossman said that he wanted to address himself to the talk about some revision of the site plan regulation. I concurr that there is a need for some revision but my concern is that irregardless of what the revision is, whether it be the revision that is proposed at the planning commission meeting monday night, whether it be in the form of an amendment or any other revisions, that at some point in the future we are going to have a case where a piece of property is properly zoned for a proposed use and where all of the stipulations of the zoning ordinance and the site plan ordinance are met and even assume that it requires a public hearing by the planning commission it would appear to me that in that instance there is no option the thing must be approved. I think that is sort of analogous to the type of situation we are in tonight. In the opinion of the planning department and the engineering department the stipulations of the zoning ordinance and the site plan ordinance were met and as a consequence the approval was pretty well mandated by the regulations. I do think that many of the suggestions that are made here tonight are probably very good. (I would briefly like to try to understand what happened to the Green Acres Petition. The date that is was suppose to have been in our office was sometime in mid-April, sometime after the building permit had been issued Mr. Sequell called our office and wanted to know what happened to that petition. We checked our files we did not have it in our files, I suggested that it might be in the engineering files, we had Mr. Istrabadi's staff check the engineering files. It was not in the engineering files and it was indicated that the petition had been delivered to Mrs. Zietlow which is probably not true and low and behold a couple of days latter the things was sitting on my desk. There is a tremendous gap in time between the time it was presumably delivered to our office and the time I actually saw it.

Councilman Towell said presuming that you had received such a petition how would that have effected the chain of events.

Mr. Crossman said that he was not sure that it would the petition expressed concern for several specific points and I think that in terms of regulations all of those points were pretty well addressed in the site plan that was approved. Had the petition been seen and available to us prior we would have had at least an opportunity to respond to it. I know we received numerous telephone calls from the neighborhood associations and in almost all cases of those who called I have invited them to come to the office and review the site plan with us. I don't remember at any time commenting to anybody that a public hearing would be held because it was our opinion that we were dealing with that single structure on a single lot that was covered by administrative review and it was the intent of the ordinance to provide for administrative review.

Councilman Mizell asked if Mr. Crossman feels that the planning commission would have refused to have had a public hearing on this property if you had approached the planning commission.

Mr. Crossman said that they would have been perfectly willing to have had a public hearing. I don't think that there was any action they could have taken other than to approve it.

Councilman Towell said that there is a further point you said that in your remarks if a property is properly zoned and all the specifications for the site plan are met there is no alternative except to go on with the building permit is that correct.

Mr. Crossman said that would be his presumption. That may be a legal opinion that I am not qualified to make. I can see no grounds for denying it.

Councilman Towell said that there is language here which has been brought to my attention by Mrs. Zietlow this is section 1.04 enactment point b) "No building permit may be issued under the authority of this ordinance for such issuance that would permit the installation of a building or facility which would not be compatible with the surrounding area.

Mr. Crossman said that the only way that we have been able to administer any regulations is not really from a judgmental viewpoint. If use is permitted within the framework of the

zoning ordinance that we cannot use the site plan as means of prohibiting that which would otherwise have been permitted. I think this might be an abuse of the site plan regulation. It may in fact make it very questionable from the standpoint of the whole ordinance being legal.

Councilman Towell said that he thinks that there are legal questions in that they haven't been raised. I presume that you would be operating by that language.

Councilwoman Davis said that the area that Mr. Istrabadi excluded when he figured what space was usable I would love to see a pizza place operated without a work table, cheesemelter, exhaust hood, counter, oven, refrigerator base, counter, ice, froster, cooler, dish washer, stove, sink, freezer. My second point is since the council cannot do anything legally about this problem tonight could we please proceed with the agenda. It is getting late.

Mr. Istrabadi said that in no place did I state that these things are in useable. I said that it is not useable floor area in a language that it does not generate a requirement for parking. There is a great difference between the two. They are not useable floor areas that generate requirement for parking.

Councilwoman Zietlow said that she wanted to pin this right down. I do think that we need a definition what you mean by useable area and we need a definition of useable area that is going to be useable by the city. I think that is really not clear.

Mr. Istrabadi said that he could put that in writing and send it to the members of the council.

Councilman Mizell said that he would like to suggest to Mr. Istrabadi that in a restaurant its the kitchen that generates the need for parking space. If you take the kitchen away from a restaurant there is no need for anybody to park outside of it.

Mr. Istrabadi said that he did not take the kitchen out. The floor area that is left in the kitchen which is used by the employee in included in there.

Councilman Mizell said that the employees without a refrigerator or oven cannot put together a pizza to sell.

Mr. Istrabadi said that without a street they cannot go into the restaurant either.

Councilman Towell said that in Mr. Istrabadi's experience of issueing building permits does the starting date of the construction effect the legality of the building permit. It has been alleged to me by numerous poeple that the building started before the building permit was issued.

Mr. Istrabadi said that there is no record what so ever, I would like to also assure you that this is the way I come to work every day I have not witnessed any construction on the building myself. Now I have not gone inside and I have no record at all that they have started.

Councilman Towell said that there are changes you can tell that from thefront.

Mr. Istrabadi said after the building permit was issued.

Councilwoman Zietlow asked Mr. Larry Owens if the City Council effectively request a special meeting of the board of zoning appeals.

Larry Owens, City Attorney, said that they could request it but whether or not the board of zoning appeals would wish to meet would be in their purview.

Councilwoman Zietlow said that is what I said effectively.

Mr. Owens said no.

Councilman Mizell said that he would suggest to the Council being as they do want to move on that it seems to me that enough evidence has been presented to indicate to me that there is a serious question whether or not the intent of the provisions of the ordinance have beenifollowed I would like to suggest that a stop work oder be issued by the city engineers office untill the board of zoning appeals does meet and these people have an opportunity to present their appeal which they were denied because they were not notified of the issuance of a building permit.

Mr. Owens said that he truly believed that such an act in resolution form or otherwise would not really be effective- in Councilwoman Zietlow's terms. This stop work order are issued by the city engineer as to whether or not various building regulations in the city of bloomington have beenfollowed. I do not think that this would be a proper legislative function of the council.

Councilman Mizell asked if the city engineer would follow a resolution passed by the council.

Mr. Owens said that he believed the City engineer would follow his duty. Perform his job to the best of his ability and to his best judgment. The council resolution could have no effect one way or the other.

Councilwoman Zietlow asked what is the recourse after the board of zoning appeals. Is there any recourse from the board of zoning appeals.

Mr. Owens said that any party who properly comes before the board of zoning appeals and is aggrieved by their decision once the board of zoning appeals has assumed jurisdiction does have a period of time in which they can petition the circuit court of the county involved....
(the tape was not real clear here)

Councilwoman Zietlow said that a question proceeds from the planning commission to the board of zoning appeals never would get to the council.

Mr. Owens said no, I would say perhaps this is out of order it has not been asked I believe effectively the time limit has run to appeal to the board of zoning appeals.

Councilman Towell said what about the fact that no one know.

Mr. Owens said that is a short coming of the whole ordinance. As I read it there is no requirement for public notice or public hearing on these decisions. The city engineers office I am sure gives out hundreds of building permits a year. There are no public notice and public hearings on any of these.

Councilwoman Zietlow asked Mr. Owens if he was saying that in answer to one of Mrs. Martins original questions is that the people do not have an appeal to their government-

Mr. Owens said that in this case that is my opinion.

Councilman Mizell said that are you saying also that when the city engineer appeared before this body and asked to have an amendment made to the site plan ordinance that gave his office jurisdiction over one building projects which are essentially commercial structures to issue building permits for these structures that he was essentially asking that the citizenery of this community be effectively excluded from any appeal in how they may be sited and located and the council as well.

Mr. Owens said that they still have there review process.

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Councilman Mizell said that if they are not made aware of the issuance of a building permit do they still have a review process.

Mr. Owens said that this is a regrettable short coming of the process. The Council is not precluded from this in there legislative function they write the ordinance.

Councilman Fix said that if anyone has any doubts about why the council once in a while I think it has been answered.

The Herald Telephone reporter asked a question at this time he was not speaking into a microphone and so the recorder did not pick it up on the tape.

Councilman Towell said in response to the HT reporters questions that there has been sentiment here for such a meeting. I guess that our esteemed city attorney said that the amount of time has run out. Is that your opinion for an appeal to be effective.

Mr. Owens voice did not record.

Councilman Towell said that he thinks that the courts are the only appeal. Is that your opinion Mr. Owens.

Mr. Owens voice did not record.

Councilman Towell said why not comment on the other question. If there is to be an appeal does it have to be to the court now.

Mr. Owens voice did not record.

HT reporter voice did not record.

Councilman Towell said that Mr. Marsheski believes that they still have an appeal. I do not know the answer to that question. But I think that should be tried.

Mr. Marsheski said that since there was in the issuance of the building permit etc. failure to comply with the site-zoning ordinance by the admission of Mr. Istrabadi tonight. I think the city itself has an obligation and my advise to the Green Acres Council will be to take action against the city proper, not against this particular action but failure to hold and perform in accordance with the laws of the city.

Councilwoman Zietlow said that she would like to move an ineffective motion. I do think right now and with the discussion which has just preceded us

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that this city has an obligation to study the whole situation very thoroughly and very quickly together with the people who are most concerned and I do moved that we ask for a stop work order and immediate meetings with all concerned parties. Councilman Mizell seconded the motion.

Mrs. Martin said that to get on the agenda for the zoning board of appeals for the next meeting which is scheduled for the 25th of July we would have to have a written request in their hands by noon of the 10th of July. Time is a wasting.

Councilman Towell asked if that is true the 10th of July.

Mrs. Martin said yes. I was told that. I inquired about that.

Councilman Behen said that what we are asking in this motion to ask the city engineer to issue a stop work order and the city attorney has advised us that the city engineer is following procedures of the law that we have written. Now we are asking him to do otherwise. Are we asking him to break the very laws that we have written.

Councilman Towell said that Mr. Owens is here and he can correct me if I am wrong but he was referring to the building code. I am not sure that we wrote it but we may have adopted it. So it is not really the site planning ordinance or the zoning ordinance or anything like that which we wrote in detail. If that makes any difference.

Councilman Fix said that a stop work order from now until the 25th seems like a long time. The sooner we get to the Board of Zoning appeals with something like this... I wouldn't think we would have to wait very many days to get, to find out what the action there would take, might be.

Councilwoman Zietlow said that she would be willing to change the motion to what ever the council might feel would be somewhat effective. But I am concern that the process of appeal and the trust of the public be really effective and I do think that we are in a very bad situation right now. I think that everybody is in a bit of a quandry as to how effective we can be and I think that is something that has to be resolved and that this issue has been made very clear and whether to issue a stop work order or calling a special meeting of the Board of Zoning Appeals or simply having a

meeting tomorrow morning of the attorneys of the city and Mr. Hughs and the presidents of the neighborhood associations and other people I don't care but I think that we have to concede very quickly to assure the people of this city and the government of this city that we are trying to deal effectively with the ordinances and with the spirit of the law.

Councilman Towell said if I can just interpret this for a minute. What we are talking about is the fact that public opinion was not effective in the process the outcome of the decision might go one way or the other at least on this point we are talking about the fact that public opinion didn't become effective. I think we can all agree on that regardless of our position.

Councilman Mizell said that he would like to speak to the motion. If we take the situation at its worse, if we assume all the allegations that have been made are true, we can see that the public has been effectively kept from any recourse at all, any legal recourse, by ignoring the petition. These people asked for a public hearing before any building permit was met. By saying that a petition did not exist these people were effectively kept out of any discussion prior to the issuance of a building permit. By the fact that the building permit was issued without their knowledge and they were not aware of the responsibility to appeal to the board of zoning appeals and in fact could not issue an appeal if it has to be written and submitted twenty days before it meets, they have effectively been excluded from any appeal process. In good conscience I cannot sit by and see citizens excluded from recourse to governmental action and told that their only recourse is in the courts. I just cannot sit by, the resolution may be ruled ineffective by attorneys but in good conscience I cannot sit still and tell these people they have to be protected from city action by going to the courts.

Councilman Towell said that Mr. Fix just whispered in his ear that perhaps the most direct way to get some resolution of this might be to approach the owner to have discussions.

Mr. Bunger, the attorney who represents the owner, I have never attempted to say anything that would affect the decision of the council in this matter. Lets assume that everything that has been said this evening has been true, I don't think at one time anyone person has intentionally misrepresented anything. But I respectfully suggest to you that there will be no injunction filed his investigation leads that it simply cannot be done.

There is no church property involved or misuse of church property. The owner of the property has not instituted litigation it is in fact the contrary beyond the scope of anything we here are concerned about. I believe that we are acting honestly and lawfully coming into a neighborhood as bad neighbors. We hope they will make themselves good neighbors and we think they will try. It is hard for me to respond to a concept where you adopt a law, you delegate power, you then determine after the fact that perhaps this was an error having been supplied by those people whom I think can be trusted, in fact under the circumstances they had no alternative but to do that of which they did. Even though we think its wrong as citizens of this community we are going to consider passing a resolution that would direct a person employed by us to do something contrary to that of which we have already told him to do. I can't respond to that because it is like any other ordinance that is adopted. We have a problem now in certain respects about making right turns on a red so we adopt an ordinance and we say this street will be one where these things will be permitted and that is the ordinance and everyone knows it. Then we come back to the chief of police and we say now chief we are going to pass a resolution that says don't enforce that ordinance. I sincerely hope you accept this as not being augmentive but as a concept that I cannot give an argument that to me is logical, I cannot conceive of that being done in any area as related to the law.

Councilwoman Zietlow said that I can understand what you said that you cannot understand But I think what we felt is that we would like is for the resolution to mean to be sure in fact things that people doubt or wonder about actually having been done which are suppose to be done were done. If that can all be satisfactorily dealt with there is no problem. I think that the questions remain that we cannot get to the bottom of it right now. I think they can probably be dealt with very quickly and effectively in the next few days if people would be willing to work together. I think the public does deserve the assurance that all things that they are asking have been done as we have asked for them to be done. Is that clear .

Councilman Towell said that he understood it.

Councilman Towell said that Mr. Bunger did say that he felt that the pizza pub wanted to be a good neighbor.

Councilwoman Zietlow said that is not the issue

Councilwoman Davis said that Mr. Bunger did not understand at all what you said.

Councilman Fix said that he would think that everybody concerned would know what has been said tonight. I personally can see no reason why we have to vote on something so apparent.

Councilwoman Zietlow asked if the planning department or the city engineer have any suggestions at this point to how we may proceed.

Mr. Crossman said that I don't really know if this is a suggestion or not. I think that if Councilwoman Zietlow's basic is correct we are not in an impossible situation. If in fact there is room for agreement between Noble Romans and both of the neighborhoods as presumed then perhaps an opportunity for Noble Romans and the neighborhoods to sit down and review the site plan and the proposal might be well in order. However I am not sure that that situation may exist.

Mr. Hughes said Ladies and Gentlemen of the council, one thing that I think people should know is that when we originally went to Mr. Crossman and his staff we had proposed about \$2,500 worth of land scaping. Mr. Crossman worked with us at some length and now we have \$6,700 worth of land scaping. Further more the expense is about \$67,000 to improve. We would hope that this would be an answer to the quality of life discussion we had earlier. We do pledge our best efforts to become good neighbors.

Councilman Towell asked the clerk to read back the motion.

Councilwoman Zietlow said that the motion was essentially to ask the city engineer to issue a stop work order until the affected parties could get together hopefully very quickly and resolve the differences of understanding.

A member of the audience asked if Mr. Hughes in the interest of being a good neighbor would himself issue a stop work order until these groups can meet together.

Mr. Hughes said that that question has come up before and we did go back to our contractor and there is a problem of very substantial damages if we stop work. However we have asked him to do

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everything humanly possible to slow down his sub-contractors to resolve this matter. We cannot completely stop some things have to go on. But I will assure you that the very minimum will go on. Also consider that we have a long week end here which very little work will be done. I will avail myself.... (inaudible)

Councilman Towell said that as I interpret comments that have been made, we are six in number here, it takes five to pass anything and two people have indicated that they would rather not vote on this.

Councilman Fix said that the reason I would rather not vote on this is because when we are going to issue a stop work order until an agreement is reached that is not very definite.

Councilman Towell said that this motion for what it is worth could not pass and so perhaps we have achieved something better than that I don't know.

A member of the audience spoke she was inaudible on the tape.

Councilwoman Zietlow said absolutely

Councilman Towell said that I think you will find that will happen.

Councilman Towell asked for someone to table the motion which I think is necessary.

Councilwoman Zietlow said that we should withdraw. The second did not want to (Councilman Mizell)

Councilman Towell said that a negative vote would not express our sentiments.

Councilwoman Zietlow moved to table her own motion. Councilwoman Davis seconded the motion. The motion failed.

Councilman Towell said that we can have a division of the house but I think I interpreted the votes correctly.

Councilwoman Davis called for the question.

Mr. Marchiski said if you would modify the motion drop the stop work order asked for a resolution to have a meeting and appoint someone to function that meeting to see that it does take place. I think the total goal will be met.

Councilwoman Zietlow said that she is amiable. I would like to in that case be sure that it would be represented

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by the city engineer, the planning, plan commission, the neighborhood associations, the owners, and at least a representative from the council at least and that this meeting would take place will tomorrow is July 4th, I imagine it wouldn't be tomorrow but before the end of the weekend.

Councilman Towell said that perhaps this is more important than a holiday. How about tomorrow afternoon. Can you make it Mr. Crossman.

Mr. Crossman said that he would not be in town.

Councilman Towell said how about Friday. How about Saturday. How about 9 o'clock the planning office down stairs.

Councilwoman Zietlow said that we would not need a motion if we can arrange the meeting right now.

A member of the audience asked the council to be more specific as to who is attending this meeting.

Councilman Towell said that we have named everyone but the council representative. Yes and the meeting will be open.

Councilwoman Zietlow withdrew her motion with the acceptance of her second.

A member of the audience said that an informal meeting may not iron out the difficulties. This might be a legal problem which we will not yield to solution simply by talking over.

Councilman Towell said that we are certainly aware of that.

Councilwoman Zietlow asked for a report from the public written or phoned by this week end to see what state you are in. I would like to know what is going on.

Councilman Behen moved that Ordinance 74-51 be introduced and read by the Clerk. Councilwoman Davis seconded the motion. The motion was carried by a unanimous voice vote.

Ordinance 74-51
Utilities
Service Board Amendments

Grace E. Johnson, City Clerk, introduced and read Ordinance 74-51 in its entirety.

Councilman Behen moved that Ordinance 74-53 be introduced and read by the clerk by title only. Councilwoman Davis seconded the motion. The motion was carried by a unanimous voice vote.

Ordinance 74-53
Annexation

Grace E. Johnson, city clerk, introduced and read Ordinance 74-53 by title only.

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Councilman Behen moved that Ordinance 74-54 be introduced and read by the clerk. Councilman Mizell seconded the motion. The motion was carried by a unanimous voice vote.

Ordinance 74-54
Vehicles and Traffic

Grace E. Johnson, City Clerk, introduced and read Ordinance 74-54 in its entirety

Councilman Behen moved that Appropriation Ordinance 74-13 be introduced and read by the clerk. Councilwoman Davis seconded the motion. The motion was carried by a unanimous voice vote.

App. Ord. 74-13
Engineering & Parks Dept.

Grace E. Johnson, City Clerk, introduced and read Appropriation Ord 74-13 in its entirety.

Councilwoman Zietlow moved that Ordinance 74-44 be introduced and read by the clerk by title only. Councilman Behen seconded the motion. The motion was carried by a unanimous voice vote.

Ordinance 74-44
Annexation Windemere
Addition

Grace E. Johnson, City Clerk, introduced and read Ordinance 74-44 by title only.

Councilwoman Zietlow moved that Ordinance 74-44 be adopted. Councilman Mizell seconded the motion.

Larry Owens explained what land was being annexed in this ordinance by use of the map. His voice did not record on the tape.

Ordinance 74-44 was passed by a ROLL CALL VOTE OF AYES 6; NAYS 0.

Councilwoman Zietlow moved that Ordinance 74-46 be introduced and read by the clerk by title only. Councilman Mizell seconded the motion. The motion was carried by a unanimous voice vote.

Ordinance 74-46
Salary Ordinance

Grace E. Johnson, City Clerk, introduced and read Ordinance 74-46 by title only.

Councilwoman Zietlow moved that Ordinance 74-46 be adopted. Councilwoman Davis seconded the motion.

Councilwoman Zietlow explained that the salaries that will be set here are \$12,000 for a project director, \$10,000 for a family life specialist, \$8,500 for alternative program for the drug commission week end community for youth. We are not appropriating the money here. This money will come from a grant.

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Mr. Bill Finch further explained the salary ordinance. His voice was not clear on the tape.

Councilwoman Davis asked if the grant is just for one year. Next year will you be asking for money from us, the city funds.

Mr. Bill Finch answered this question. His voice was not clear on the tape.

Councilwoman Davis asked if the City would be asked to fund these positions eventually.

Mr. Finch said that he did not foresee that at all.

Ordinance 74-40 was carried by a ROLL CALL VOTE OF AYES 6; NAYS 0.

Councilwoman Zietlow moved that App. Ord 74-12 be introduced and read by the clerk by title only. Councilman Mizell seconded the motion. The motion was carried by a unanimous voice vote.

App. Ord. 74-12
Local Road & Street Fund

Grace E. Johnson, City Clerk, introduced and read App. Ord 74-12 by title only.

Councilwoman Zietlow moved that App. Ord 74-12 be adopted. Councilman Behen seconded the motion.

Martha Ellen Sims, City Controller, said that as you know we have requested that \$125,000 to be appropriated from our local road and street fund moneys is to our credit in this case. They will send that when we have matched that amount with 10% which is \$12,500. The only reason that they won't send it without this is because moneys cannot do anything until this is all approved. Mr. Miller of the state highway department suggested that we go ahead and match this fund so we can get that money. We might as well have it and invest it.

Appropriation Ordinance 74-12 was passed by a ROLL CALL VOTE OF AYES 6; NAYS 0.

Councilwoman Zietlow moved that Resolution 74-37 be introduced and read by the clerk. Councilman Behen seconded the motion. The motion was carried by a unanimous voice vote.

Resolution 74-37
Budget Transfer

Grace E. Johnson, City Clerk, introduced and read Resolution 74-37 in its entirety.

forty

Councilwoman Zietlow moved that Resolution 74-37 be adopted. Councilman Mizell seconded the motion.

Councilwoman Zietlow asked if the animal shelter budget was to buy a chair.

Martha Ellen Sims explained the budget transfer. (Her voice was not recorded on the tape)

Resolution 74-37 was passed by a ROLL CALL VOTE OF AYES 6; NAYS 0.

NONE

REPORTS FROM OFFICIAL
BOARDS AND COMMISSIONS

NONE

REPORTS FROM STANDING
COMMITTEES

NONE

REPORTS FROM SPECIAL COMMITTEE

NONE

REPORTS FROM CITY OFFICIALS
AND DEPARTMENT HEADS

NONE

OTHER NEW BUSINESS

NONE

UNFINISHED AND MISCELLANEOUS
BUSINESS

NONE

EXAMINATION OF CLAIMS

Councilwoman Zietlow moved that the meeting be adjourned at 11:00 p.m.

ADJOURNMENT

Councilman Towell adjourned the meeting at 11:00 p.m.

James S. Ackerman

ATTEST

Julaine Thomas