

In the Council Chambers of the Municipal Building, on Thursday, September 19, 1974, at 7:30 p.m., with Council President James Ackerman presiding.

REGULAR SESSION
COMMON COUNCIL
CITY OF BLOOMINGTON,
INDIANA

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

Absent: Jack Morrison, Sherwin Mizell.

ROLL CALL

Martha Sims, Controller; Grace Johnson, City Clerk; Larry Owens, Attorney; Mr. Crossman, City Planner; Chief Chambers, Police Chief, Mr. Register, Corporate Council.

CITY OFFICIALS PRESENT

About 60 other people including members of the press.

OTHERS PRESENT

Councilwoman Zietlow moved the minutes of August 26, 1974 be approved. Councilwoman Davis seconded the motion.

MINUTES
August 26, 1974

Councilpresident Ackerman made a few corrections concerning words left out and incorrect adjournment time.

Councilwoman Zietlow moved the minutes be approved as corrected. Councilwoman Davis seconded the motion.

The motion was passed be a unanimous voice vote of the council.

A former award-winning photographer for the Milwaukee Journal was nominated today to the city's Telecommunication Council by Mayor Frank MCCloskey. The nomination of John W. Ahlhauser, photographer for Milwaukee newspaper for twenty-five years, must receive the advise and consent of the Common Council. Ahlhauser replaces Mark Oring, who recently resigned.

MESSAGE FROM THE MAYOR

Presently a doctoral student in Mass Communications at Indiana University and associate instructor in photojournalism, Ahlhauser was honored three times by the National Press Photographer's Association for the top Picture of the Year awards as well as 30 other awards from the Wisconsin Press Photographers Ass. and the Inland Press Association.

Ahlhauser completed work on his Master of Arts at IU last year. His Masters thesis was a 17-minute video cassette entitled "The Electronic Newspaper," which explored the possibility of electronic transmission of daily news. To date, the cassette has been purchased by eight universities and colleges for use in their journalism and communication courses. The

The Associated Press, United Press International and eleven newspapers and professional organizations have also ordered copies of Ahlhauser's cassette.

Ahlhauser is also lecturing this year at IUPUI in graphic communication and served as a lecturer in photojournalism at Marquette University for five years.

His photographs have appeared in Life, Jubilee, Sing, and Marriage magazines.

He is married to the former Lois Hamm. The Ahlhausers have six children and reside at 111 Meadowbrook.

This above statement was read to the council by Councilpresident Ackerman.

Councilman de St. Croix moved that the council comply with the Mayors recommendations. Councilman Behen seconded the motion. The motion was passed by a unanimous voice vote.

Councilman de St. Croix; I have just returned from two weeks in England and have had a chance to view the types of problems and difficulties they have to handle, not only in terms of their gov't. but also their economy and it is kind of refreshing to come back to our kinds of problems.

MESSAGES FROM COUNCILMEMBERS

Councilwoman Zietlow; I would like to thank Councilman Towell for the work he put in on the Utilities Ordinance

Councilpresident Ackerman; Councilwoman Zietlow's words preempted what I was about to say. We appreciate all of your work.

Councilwoman Zietlow; The Women's Commission has asked me to convey to the public and the council a request for help and assistance in running a survey. Please call the council office if you could help. They would appreciate your assistance.

Councilman Behen; I see a lot of new faces that I have not seen here before, and wanted to bring to your attention that the business we will be conducting in the next few minutes when we do first readings is just to get them read and before the Council. When I first came to Council meetings I use to think, my gosh, their passing all of these things, when really it is procedure - and we take no action on them at this time.

Councilman de St. Croix moved that Ordinance 74-56 be introduced and read by title only. Councilman Behen seconded the motion. The motion was passed by a unanimous voice vote.

INTRODUCTION OF GENERAL
AND SPECIAL ORDINANCES

74-56 - Emergency Vehicle Lanes

Grace Johnson, City Clerk, introduced and read ordinance 74-56 by title only.

Councilwoman Davis; People have been working on this ordinance for about six months or so. The fire chief, traffic commission, Scott McTagart and others have done a lot of work. It is an ordinance prohibiting parking on public property, where it would confine function of fire men in the fire lane. Parking in these fire lanes can be - so very dangerous.

Councilman de St. Croix moved ordinance 74-66 be introduced and read by the clerk by title only. Councilman Behen seconded the motion. The motion was carried by a unanimous voice vote.

74-66 - annexation of properties on east 3rd Street.

Grace Johnson, City Clerk, introduced and read ordinance 74-66 by title only.

Councilman de St. Croix moved ordinance 74-67 be introduced and read by the clerk by title only. Councilman Behen seconded the motion. The motion was carried by a unanimous voice vote.

74-67 - annexation of properties in the 400 block of South High Street

Grace Johnson, City Clerk, introduced and read ordinance 74-67 by title only.

74-68 - annexation of properties on east 3rd Street.

Councilman de St. Croix moved ordinance 74-68 be introduced and read by the clerk by title only. Councilman Behen seconded the motion. The motion was carried by a unanimous voice vote.

Grace Johnson, City Clerk, introduced and read ordinance 74-68 by title only.

Councilman de St. Croix moved ordinance 74-69 be introduced and read by the clerk by title only. Councilman Behen seconded the motion. The motion was carried by a unanimous voice vote.

74-69 - annexation of properties on College Mall Road and Moores Pike East

Grace Johnson, City Clerk, introduced and read ordinance 74-69 by title only.

Councilman de St. Croix moved ordinance 74-70 be introduced and read by the clerk by title only. Councilman Behen seconded the motion. The motion was carried by a unanimous voice vote.

74-70 - annexation of properties on South High Street

Grace Johnson, City Clerk, introduced and read ordinance 74-70 by title only.

Larry Owens; I would like to make one remark concerning all of these ordinances. These ordinances are for the most part involving islands within the city boundaries that have developed for various reasons that are un-appropriated. To point these out on a city map would be the easiest way to make these known to you.

Councilman de St. Croix moved ordinance 74-71 - "Sergeant - At - Arms 74-71 be introduced and read by the clerk. Councilman Behen seconded the motion. The motion passed by a unanimous voice vote.

Grace Johnson, City Clerk, read ordinance 74-71 in its entirety.

Councilman de St. Croix moved ordinance 74-72 - "Utilities Service 74-72 be introduced and read by the clerk. Board Councilman Behen seconded the motion. The motion passed by a unanimous voice vote.

Grace Johnson, City Clerk, read ordinance 74-72 in its entirety.

Councilman de St. Croix moved resolution 74-43 be introduced and read by the clerk. Councilman Behen seconded the motion. The motion passed by a unanimous voice vote. SCHEDULED BUSINESS Resolution 74-47 - "Inside-Out"

Grace Johnson, City Clerk, introduced and read resolution 74-43 in its entirety.

Councilman de St. Croix moved that resolution 74-43 be adopted. Councilman Behen seconded the motion. The motion passed by a unanimous voice vote of the council.

Councilman de St. Croix moved that resolution 74-44 be introduced and read by the clerk. Councilman Behen seconded the motion. The motion passed by a unanimous voice vote of the council. 74-44 - Jean Farmer

Grace Johnson, City Clerk, read resolution 74-44 in its entirety.

Councilman de St. Croix moved resolution 74-44 be adopted. Councilman Behen seconded the motion. The motion passed by a unanimous voice vote of the council.

Councilpresident Ackerman; There is a widely spread feeling of admiration in the Bloomington area for what she has done and are glad to see her efforts being acted on.

Councilman de St. Croix moved Ordinance 74-40 be introduced and read by the clerk by title only. Councilman Behen seconded the motion. The motion passed by a unanimous voice vote. Ordinance 74-40 - Itinerant Merchants

Grace Johnson, City Clerk, introduced and read by title only, ordinance 74-40.

Councilman de St. Croix moved that ordinance 74-40 be adopted. Councilman Behen seconded the motion.

Council president Ackerman; Because the ordinance takes roughly seven pages I have prepared a short summary of what it contains. The purpose of this ordinance is to protect citizens of Bloomington against sellers who take orders for goods to be delivered in the future; to see that these sellers are licensed, and when they collect money in advance - to see that they post bond so that the consumer will be protected. The results of this ordinance is, " a more wholesome atmosphere in which all business can operate. People will not have to be suspicious of sales persons who come to their door when they are licensed and bonded by the City." A person who collects money in advance of delivery must be bonded for \$500 unless: 1) he represents a non-profit organization and secures an affidavit from three residents who will assure liability for goods not delivered. 2) he represents a profit-making organization and submits proof from Secretary of State that his or her corporation is in good standing in the state of Indiana. All persons doing direct selling must be licensed, in which they prove the reliability of their firm and that they are authorized to represent that firm, and that they're license is for 30 days and is renewable every month. Other people who deliver goods at time of payment must also be licensed (but not bonded) unless they sell goods or produce manufactured or grown by that person and his immediate family. The license is \$5 for a 30 day license which is renewable monthly for \$2.

Councilman Towell; I have been given the job of working on the amendments and will be glad to propose them when time is ready.

Alan Luce - Attorney representing the direct selling association; A number of companies involved in the Direct Selling association came forth in a hearing Tuesday evening to discuss their views. At that time, the direct selling association, for it's members, recommended a proposal to the council for its consideration concerning alternatives. It was then suggested we get together with Mr. Irvine to discuss it. We did that, prepared a draft at which Mr. Irvine approved of and we have presented that draft to the council this evening. In time, whatever that may be in your procedures I will be glad to answer all questions the council has concerning these amendments.

Councilman Towell; Would you explain to the public the general approach of the amendments.

Mr. Luce; Chapter 4.18 is one of our suggestions. The program says companies come forward and are willing to comply with the requirements in Ordinance form that can guarantee to consumers , something that no existing type of ordinance can do. It guarantees a quick no cost means of having consumers grievances explained and resolved to their satisfaction. Their lines of communication would be on the executive office level of the companies, since we have found the higher in the company one goes with their complaints and questions, the more satisfaction they will get. The companies will submit a list of these mens names, addresses and phone numbers.

Councilman Behen; Does this step around the problem that you and Mr. Irvine expounded on the other night, where, these people being independent as they are, what you are saying here is that the company is assuming responsibility of their agents on acting on their own.

Mr. Luce; Exactly. The company will recognize, resolve and take responsibility for those actions by this act, where independent agents are not legally required yet morally we are required to do something about such actions.

Councilman Towell; At this time I will read the amendments proposed.

Councilman Towell moved that the ordinance be amended as he just read. Councilman de St. Croix seconded the motion.

Scott McTaggart - Work study aid to the council; This is an amendment to take care of an oversight at a meeting between Mr. Irvine, Mr. Luce and Mr. Wyatte earlier today.

Councilwoman Zietlow; Shouldn't we do all the amendments and then discuss them at length.

Councilpresident Ackerman; Yes if this is advisable.

Councilman Towell; Read more ammendments at this time.

Councilman de St. Croix; Is the representative from the legal department here. I would like a legal appinion on some of these before we go any further.

Mrs. Shaffer; The legal representative has left for home which you know is quite far from here. I looked up

the amendment procedure under the council rules and that really talks about amendments which are germane to the subject matter, which this is, and I don't think those particular rules prevent you from doing this. I did talk to John about it and he views this as completely in accord with the rest of the substance. It is not an additional ordinance in any way subject matter wise. Also the other point that was raised, as I understand it, was the substance of these amendments was discussed Tuesday night in a public hearing therefore this is not the first time these have been discussed publicly.

Councilman Towell; I believe we can do this as appropriate. However should people be against what we are doing then they might make that deduction.

Councilman Behen; I object to writing an ordinance on the floor, are we proposing to do this here?

Councilpresident Ackerman; There is nothing new here right now. I would like to say that I find it very regrettable that the City Attorney's office is not represented while we are discussing the making of city law.

Councilwoman Zietlow; Could Councilman Towell move that they be read at once, by the clerk.

Councilman Towell; I will be glad to turn this over to her now.

Grace Johnson, City Clerk, finished reading the amendments.

Councilpresident Ackerman; One basic question, It seems to me that we are losing the uniform licensing, are we not?

Mr. Luce; We could not determine any way in which to accomplish the licensing without running into the burdens of administrative problems both for the local direct sellers and for the city. We kicked around 15 or 20 ideas about which which we might go about this, all of which had limited drawbacks. We determined that the best program of this situation would be to file a listing of the companies at the Better Business Bureau and that the consumers would locate these offices with any questions they would have.

Councilman Towell; What about this number 10. How did you arrive at the number 10 non-deliveries?

Mr. Luce; That is an arbitrary number. Actually John and I did not discuss it and it could be reduced. The point is, when you talk about automatic revocation, I think you have to put the administrator of the revocation procedure on pretty safe grounds for due process purposes, in order to avoid a charge that the revocation is an arbitrary act. Therefore non compliance could always be grounds for inquiry. But for automatic revocation we chose the number 10 which is an arbitrary number.

Councilman Towell; The other point that struck me is, after what date and before what date?

Mr. Luce; It starts October 10th 1974 on. You've raised a question that I have not frankly considered. I think that within the reason of expression of the person who administered the revocation procedures, I would not want to hazard a guess of what the person would do if it ever came to a question of termination. I think they would apply a reasonable time standard.

Councilman Towell; The whole problem of, are we taking away any rights of people by having this kind of administrative set up struck me. In other words, suppose someone wanted to go to a small claims court about this. This is not in anyway precluded, he wouldn't have not gone through administrative privileges or something of this sort?

Mr. Luce; Absolutely not, in fact, if you wish to put a proviso of that effect into the ordinance in an additional amendment to the amendment, we would have no objections whatsoever.

Councilman Towell; In other words, there would be a complaint procedure here, but it is not a necessary one in so far as the courts are concerned?

Mr. Luce; We would not require or even desire to preclude people seeking small claims court as a remedy. Our thought in this matter is that actually this is a preferable remedy, at least a first step, because it does not require any amount of time or cost to the consumer.

Councilpresident Ackerman; Could we have a ruling from the various attorneys in the audience and then we'll take a vote as to whether or not we should add that into the ordinance.

Maggie Shaffer; There is a procedure involving amending amendments. I don't think it would hurt anything, so maybe in that case you would want to add a sentence.

Councilman Behen; All we have to do is come up with another amendment in the pages of amendments, there are already seven. The ordinance is only seven pages long so we could excuse the number of pages of amendments that we have within the ordinance. I just feel that when someone throws seven pages of amendments at us at one time that I can not digest it and write new amendments.

Councilpresident Ackerman; I think councilman Behen has a good point, however, we did discuss it two nights ago, and the substance of these amendments was given to the council at this time. Furthermore, there are representatives of legal counsel here and also of the companies here from Washington and I would not like to delay this much longer.

Councilman Behen; I realize that, and I am very sympathetic with these long traveled people, but the people of this community are the ones that are going to have to live with this ordinance. Both the buyer and the sellers and I'm more concerned with them than I am with our long travelled visitors.

Councilman de St. Croix; Would it be possible to table the ordinance until the next meeting in order to study this more.

Councilpresident Ackerman; I thought we had already addressed ourselves to that question that it was not necessary. I would prefer to muddle ahead.

Councilwoman Zietlow; Are our long traveled visitors here at the request of the people of Bloomington?

Mr. Luce; That is correct, we are here to represent the local citizens of Bloomington that are members of our company.

Councilwoman Zietlow; Therefore I think we are taking the people of Bloomington into consideration tonight and think we could go on.

Councilman Towell; I seem to be the unwitting recipient of arrows from Councilman Behen tonight, yet I am sympathetic to what he has been saying. My main concern was

to quiet some fears I heard in the public hearing Tuesday night. In other words if we do not even show willingness to consider this kind of proposal that we would be open to not being receptive. So what I am interested in doing is to get this out in the open to introduce it to the council. If some members of the council feel they need more time to consider this I would not consider that a reflection on them at all.

Councilpresident Ackerman; I would just like to add here that this ordinance was basically done by the director of the student legal services of the University and the amendments are a result of joint work between members of the Direct Selling Association and the Director of the Student Legal Services. And that this seems to reflect a union of diverse interests to a common purpose and end.

Councilman Behen; I am sorry if what I said previously has disturbed others I just want to reiterate that I don't feel it is good practice to write or do major changes here on the floor. It has been done in the past with other ordinances and I didn't feel good about it then.

Councilpresident Ackerman; I just want to comment I think the proposed amendments to the ordinance give the city much more control than the original ordinance did. This is a step toward further protection of the community.

Councilwoman Zietlow; The other night you said you thought the other ordinance would not be workable. Is it your opinion that the amendments that have been presented to us are going to make it workable?

Mr. Luce; Chapter 4.18 amendments are very workable. In fact they have the beauty of self enforcement. You either comply or fall back then under the requirements of chapter 4.16 and 4.17, which were the amendments that bothered us. Chapter 4.18 will apply primarily to your local citizens who you can apprehend anyway. So yes to them it is very important. Chapter 4.16 and 4.17 are the licensing and bonding provisions, my basic feelings about those provisions remain unchanged, however I understand that Mr. Irvin and the members of the group and members of the

council feel that you can enforce them and you certainly will catch a certain number of the persons that you are trying to protect the community from with this ordinance, and thereby have the provisions necessary to punish them. I find myself in kind of a torn position. Let me say this, violation of any of the three chapters will give the city that which John apparently felt they didn't have now, that was a legal ordinance which has the effect of providing the justice of law.

Councilman Towell; I'm willing to offer a compromise. And that is, that we adopt the amendment to make it part of what we are considering and then amend the other ones at another time.

Councilwoman Zietlow; In section 3, I would like to clarify the meaning of that. It seems to me that you're assuming the responsibility for the actions of these people. Is that right?

Mr. Luce; Yes.

Councilwoman Zietlow; If as it states the company is punished when action is not according to what it should be or promises are not meant what does this do to the individual sales person?

Mr. Luce; This in effect makes them come and get a license and pay the proper amount as originally set out. But we are dealing with companies that have been in business a long time and wish to stay in business. I feel they will not do anything to jepordize their standing, so they will do nothing to jepordize the status of their local representative.

RECESS

Althena Otts; It is kind of amusing to come and listen to what the council is empowered to do, and nothing is being done. This is of course secondary to why I am here. It seems that there is a lot of presumption on the part of both planning commission and the developments of the council sites as to an RS zone being used for their parking. They need additional parking other than what they have on their site. Now can an RS zone be used for public parking? I don't find in the city code where this can be done. So I bring this petition regarding the Carrico site.

PETITIONS AND COMMUNICATIONS

Mr. Crossman; I think partially, one of the issues that the planning commission will have to address is an interpretation of the ord. The ordinance states that parking

must be provided on site or within 200 feet of the site. It does not state in any way whether that 200 feet has to be within a commercial zone or not. But I think this is really a matter that the commission will have to review and clarify.

Councilwoman Zietlow; I would hope that when the planning commission meets although it is an oversight that we did not specify that an RS zone could not be used for parking lots, there is a definition of the intended purpose of the zone. and I do hope that the commission and the department will take that intended purpose of the RS zone into consideration. It clearly does not include in it's overall intent that a whole lot be used for parking.

Mr. Crossman; There are of course, and I think that one of the things they'll have to be considering, there are advantages both ways. Certainly the Rs zone is intended to be utilized by a single dwelling. The oportunity however, of utilizing parking in less restricted zones than a commercial zone, may on some occassions afford us the oportunity to allow parking in some areas that may be logical without the necessity of rezoning these properties. There are issues on both sides of the line and I think this interpretation is justifiably before the planning commission as something they are going to have to wrestle with.

Councilman Behen; What would the other occasion be to have a parking lot in a residential zone?

Mr. Crossman; We're talking about in all cases it has to be within 200 feet of a commercial site. It is entirely within the realm of possibility that a site that is within 200 feet of a comercial site may in fact be right for someone to request commercial rezoning and we might permit parking without commercial rezoning. So I think we have to look at this both ways.

Councilman Behen; You're confusing me again, You say to our benefit, To whom's benefit are you speaking?

Mr. Crossman; The city's.

Councilman Behen; What about the people who assumed they were in a residential area and zoned as such?

Mr. Crossman; Well, this is what I am saying, we are going to have to make an interpretation, and look at each case.

Councilpresident Ackerman; I would like not to get off too much into a detailed discussion. The point of petitions and communication is to call to the attention of the council certain problems.

Mr. Crossman; This is one of the problems that is within the report to go before the planning commission. This particular site that is proposed to be used for parking is a long triangle on the west side and in my opinion not a likely candidate for single family dwelling. Yet it is at the present time zoned for single family.

Councilman de St. Croix; I think that the issue of petitions and communication is to raise the problems. I would go along with suggesting that we draft an amendment or at least look into this at a later date.

Councilpresident Ackerman; There being no other petitions and communications we will return at this time to the discussion of ordinance 74-40.

Councilman Towell; Well, my question was, how did the controller like all of this that is being put in her lap?

Martha Simms; This is the first time that I've seen this too. I do feel this places the responsibility on the corporations themselves and not on the individuals. And I think this is much more important than having each of these individuals come in one at a time.

Roll was called and the amendment passed by a Vote of AYES 6; NAYS 1. Councilman Behen voted no.

Councilman Towell read further amendments to ordinance 74-40. Councilwoman Zietlow seconded this proposed amendment.

The amendment passed by a ROLL CALL VOTE OF AYES 7; NAYS 0.

Councilman Towell proposed amendment part of ordinance at first reading. Councilwoman Zietlow seconded the proposed amendment

The amendment passed by a ROLL CALL VOTE AYES 7; NAYS 0.

Councilman Towell proposed the last amendment to page four. Councilwoman Zietlow seconded the proposed amendment..

The amendment passed by a ROLL CALL VOTE OF AYES 7; NAYS 0.

Councilwoman Zietlow moved that ordinance 74-40 be adopted as amended. Councilwoman Davis seconded the motion.

Mr. Townsend staff attorney for the Student Legal Services spoke for the ordinance. He relayed incidents that are currently occurring on campus involving magazine sales. The conversation was not totally audible.

Ordinance 74-40 passed by a ROLL CALL VOTE OF AYES 5, NAYS 2. Councilman Behen and Councilman de St. Croix voted no.

Councilman de St. Croix; With permission of the council I would like to offer a motion. I move the Common Council express its displeasure with and disappointment in the City Attorney for neglect of his responsibility and duty. Due to his absence during discussion of ordinances under consideration at second reading and the subsequent lack of legal representation and opinion for the city as the council attempted judicious decision making, we request the Mayor as chief executive officer of the City of Bloomington instruct the City Attorney or his deputy to henceforth be present to provide legal counsel as needed whenever the Common Council has ordinances before it for its deliberation.

Councilman Towell seconded the above motion. The motion passed by a unanimous voice vote of the council.

Mr. Luce; I would like to say something if I might. The other evening I was asked if I do this quite often. Yes I do, I travel all over the country to do this. And I want to say with all sincerity that we have never come into a community where they tried harder to hear all the points of view and showed the members of my industry more courtesy than this group has and I want to thank you very much.

Councilpresident Ackerman; Thank you Mr. Luce

Councilman de St. Croix moved that ordinance 74-65 be introduced and read by the clerk. Councilwoman Davis seconded the motion.

Grace Johnson, City Clerk read ordinance 74-65 in its entirety.

ORDINANCES - SECOND READING
74-65 - Restricted Turn Signs

Councilman de St. Croix moved ordinance 74-65 be adopted. Councilwoman Davis seconded the motion.

Councilman Towell; I have been at those corners frequently and I thought you couldn't turn.

Councilpresident Ackerman; The sign is to be posted in 90 days.

Councilwoman Zietlow; I talked with people in the neighborhood, and everynow and then it would be good to be able to turn there. There are a lot of people here from that neighborhood and I wonder if they have any feelings.

Audience; I believe that a right turn should be permitted from High onto third and from Bryon onto third, on a red light.

Councilman de St. Croix; With a hill immediately to the left and not a very clear view particularly as people coming on that light traveling toward the mall on third street see the light and see that they have a green are probably likely to accelerate. I have some question allowing that right turn from High onto third, on the other hand I fully endorse the right turn from Bryon.

Councilman de St. Croix moved that #2 in section 1 be stricken thus permitting a right turn from Bryon onto third but would prohibit a right turn from High onto third. Councilman Behen seconded the motion.

Chief Chambers; I think a very good point was made on the right turn from Bryon, in that turning right from Bryon onto third would then enable a person to make an immediate left onto High. Knowing the intersection very well I would say there would be a good possibility of accidents in such right turns.

Councilman Behen; Particularly in view of the number of students around that particular area I think we should reconsider the situation.

Councilman de St. Croix; Mr. President, with the permission of my second I would like to withdraw my motion.

Councilman Behen; I seconded it and I will withdraw my second.

Chief Chambers spoke from the audience regarding the ordinance but it was inaudible.

Ordinance 74-65 passed by a ROLL CALL VOTE OF AYES 7; NAYS 0.

Councilman de St. Croix moved that ordinance 74-63 be introduced and read by title only. Councilman Behen seconded the motion. The motion was carried by a unanimous voice vote.

74-63 - Zoning

Grace Johnson, City Clerk, read the ordinance by title only.

Councilman de St. Croix moved ordinance 74-63 be adopted. Councilman Behen seconded the motion.

Councilman de St. Croix then moved that ordinance 74-63 be tabled due to lack of legal counsel at the meeting. Councilman Towell seconded the motion.

Motion to table ordinance 74-63 was defeated by a ROLL CALL VOTE OF AYES 1; NAYS 6. Councilman de St. Croix voted to table.

There followed some discussion as to the legal question surrounding this ordinance. All discussion was not clear. Some councilmembers voiced brief views and Mr. Barnhard, from the audience spoke, stating that he didn't know that there was any legal question involved as far as he, as legal advisor for the petitioner could see, but that he would welcome any legal advice by city attorney if the counsel felt it advisable.

Councilman de St. Croix; I have great respect for Mr. Barnhard's legal skills and in fairness to his presentation I can not presume that as counsel for the petitioner that he is going to point out any legal questions pertaining to the ordinance, of ^{concern} the city. Further I can not presume that I will have the wisdom, the foresight or the knowledge to spot all of my legal questions. Lawyers have a way of presenting and wording things that are most complicated and take skill to read and understand.

Mr. Crossman; Explanation of the property being considered; Very simply, this property is presently being used for a service station. The consideration of the planning commission was that the non-conforming status of the service station was such that it could not be repaired or rebuilt in any significant degree. However it could continue its use in it's present state. They felt the rebuilding would be in ^{the} best interest of the site.

The staff recommendation was eventually negetative. We were concerned that we might be establishing a spot zone that is not existent in the area at the present time. We didn't find a justification for a change of zone, although we did suggest that it might be appropriate for the petitioner to go before the board of zoning appeals and ask for a variance of the provisions which require or limit the amount of improvements that can be made on the sight. I think perhaps either recommendation is appropriate, the change of zone or our recommendation.

Mr. Barnhart; We have a number of exhibits, including photographs of other businesses in the area as well as photographs of the property. Briefly, this is a one acre tract. In 1960 a service station was constructed. Since 1963 it has been operated by H Materials. It is one of two filling stations on South Rogers Street. We cannot remodel this site under its present zone, which limits us to 30% of its assessed value. A total remodeling job would greatly improve the looks, but can not be done under these previsions. Mr. Barnhart continued to talk about the proposed site, but much of what he said was not clear so cannot be reproduced.

Councilwoman Zietlow asked a question of Mr. Crossman regarding this property and the Board of Zoning Appeals but it was not audible.

Mr. Crossman; I don't think I am in the place or position of speaking for the Board of Zoning Appeals. I think what was suggested was that an alternative route would be where the petioner could request that the Board of Zoning Appeals would grant a variance from the certain interpretations in our ordinance and allow them to improve the dollar value in excess of what is permitted in the ord.

Councilman de St. Croix; Is that legally possible?

Mr. Crossman; The Board of Zoning Appeals, of course has the right to vary from the strict intrepretation of the zoning regulations. The variance per say should involve a physical hardship either financial or economic. They could request a special exception, or they could request variance or modification

of interpretation with administrative order. However in this case it is not an interpretation of administrative order. But these two possible routes are available. It could go before the Board of Zoning appeals as could any appeal.

Councilpresident Ackerman; If it is approved by the Board of Zoning Appeals, is the same process of site plan review that Mr. Barnhart has cited as an advantage to the city of rezoning, is that same process untrue with deceleration lanes and beautification in the process of remodeling?

Mr. Crossman; I think that any time we are substantially rebuilding a site the issue is not whether it is a matter of rezoning or whether the change of the site will allow us the review possibility in the site plan ordinance.

Councilwoman Davis spoke here and was unaudible.

Mr. Barnhart; If I might address a few more remarks to this. One of the problems is this project was scheduled for remodeling early this summer. It was presented to the city in July and got to the plan commission in August and to the Common Council in September. If we get to the Board of Zoning Appeals in October that is a rather substantial delay in planning in my eyes. If we had foreseen the possibility of a variance being favorably recommended by the Planning Dept. prior to having already gone to the Planning Comm. we could have saved maybe 60 days. Now to tell us to back up and go through it all over again would be very difficult, especially at this time of year, with factors as weather to consider.

Councilman de St. Croix spoke here and was not completely audible. Is the plan presented to improve the facility or to change the place entirely?

Mr. Barnhart; Imperial does not intend drastic changes. It is to improve the facilities, of which there might be some changes. It would be wrong to indicate to you that they are not considering self service at that station at some time, because self service in some places in Indiana is becoming very popular and therefore is almost forced upon us.

Councilman de St. Croix; Will this generate an increased traffic flow if it does generate business as you say?

Mr. Barnhart; Obviously you don't make a change in business without the hopes that you will improve it. It's already a successful station and has been for fifteen years. They hope by remodeling it, certainly not to decrease the business, but to increase the business.

Councilman de St. Croix; Then through the remodeling process, one thing with your hopes, that would be considered would be an increased traffic flow through increased business.

Mr. Barnhart; I think the type of remodeling we are talking about is causing traffic there to stop. I don't think people are going to drive from the east side of Bloomington to the southwest side of Bloomington just to trade at that station.

Councilman de St. Croix; But with the self-service type of station which allows people to cut expenses, there would be more traffic. And I could very well see people traveling across town to buy their gas.

Mr. Barnhart; I seriously feel that this will not be the only one in Bloomington if in fact it would come in.

Councilman Behen; To relieve Councilman de St. Croix's fears, there is a self service station on Whitehall Pike that I pass three or four times a day and I don't see cars lined up to buy gas there.

Mr. Barnhart; As we tried to say earlier, if we go into self service it will be purely a defensive move to keep up with competition. At this point we are not interested in self service, we can not see the economics of it.

Councilman de St. Croix; Then the remodeling is for synthetic value?

Mr. Barnhart; It is not just for synthetic value. You have to keep up with the times in order to operate efficiently.

Ordinance 74-63 passed by a ROLL CALL VOTE OF AYES 5; NAYS 1; and 1 ABSTENTION. Councilpresident Ackerman voted no and Councilman de St. Croix abstained.

Councilman de St. Croix moved ordinance 74-64 be introduced and read by the clerk. Councilman Behen seconded the motion.

74-64 - Zoning

Grace Johnson, City Clerk, read Ordinance 74-64 by title only.

Councilman de St. Croix moved that ordinance 74-64 be adopted. Councilman Behen seconded the motion.

Mr. Crossman; This is an ord. that was initiated principally on the origination of the Plan Commission itself. It was called to the attention by a request of the East Side Neighborhood Association. The Ordinance requests a modification in certain areas from RM zoning to RS zoning. Staff findings after reviewing the ordinance, were exceptionall, regarding the uses in consideration are presently single family uses. As a consequence the Planning Commission recommends to you a change from the RM classification to the RS classification.

Councilman de St. Croix; Is it the general procedure of the legal department to handle the legal responsibility of zoning before they come to council?

Mr. Regester; That is handled by one of the other of us. I haven't reviewed them myself. My understanding was that there weren't going to be any problems.

Councilpresident Ackerman; Mr. Crossman, does the Planning Department generally send zoning ordinances to the legal dept.

Mr. Crossman; The Planning Department drafts the planning report for the committee. Now if any questions come up at the meeting the deputy city attorney who attends the meetings generally handles these. If there is a legal question that comes up then it is directed to the City Attorney. The ordinances per say are generally drafted by the planning staff and forwarded to the council office, generally based upon the legal d scription furnished us by the petitioners.

Councilman de St. Croix moved that Ordinance 74-64 be tabled. Councilwoman Zietlow seconded the motion.

Dean McClelland; I represent the East Side Neighborhood Association. As Mr. Barnhart said earlier this is a long procedure. We have met with the planning commission as a group, on July 1, July 22, August 5 and August 26. We have had three other meetings in addition to this. We have done a great deal of work, spent a great deal of time on this in groups and as individuals, to have it tabled now. We have a great delegation here tonight and I would like them to stand up so you can see the citizen concern on this project.

Councilman de St. Croix; I fully appreciate the concern and effort you all have put into this. Again I am trying to do the best job I can and this is all I can do. As I stated earlier, one of the things I try to deal with not only is judiciary but also legally. Because of the problem we have encountered tonight, I am terribly sorry I have inconvenienced you, and I may be entirely off base on this, but I am entirely capable of error in such areas and I am sorry that legal council is not here. I am just stating my position.

Dean McClelland; If there is a legal problem here we would like to know what it is.

Councilman de St. Croix; I didn't say there was a legal problem. I said I am not an attorney that I count on the legal department to make sure there are no legal problems. If I can not have that support or back up this evening I can not presume that there is no legal problem.

Mr. Register responded to councilman de St. Croix saying that he saw no evidence of any legal question being presented while in the making. And that he knew of no legal problems involving this ordinance. He was not completely audible but stated these thoughts.

Councilman Towell; I received a letter from an attorney about the ordinance, saying he had a deposition on this ordinance regarding the property on the corner of Mitchel and Atwater.

In the change of tapes the rest of the conversation was lost. But results were that this had been investigated and proposed no problem legally.

Council president Ackerman; Mr. Regester, may I read you one paragraph of a letter written by Mr. Istrabadi. On August 6th 1974 Mrs. Majorie Dickenson applied for a building permit to place four units on a lot in the area being considered for rezoning. At the time of her application she had every right to assume that this development would be permitted if she met site plans. Since Mrs. Dickenson's site plan review is still in process and since Council is considering a change in zoning classification, which will adversely affect Mrs. Dickenson's property rights, the Engineering Department feels that it would be appropriate that building permits applied for prior to the change of zoning approved by council would be honored by the City Engineer. This policy is the same policy established by council when building permits connected with the general rezoning of 1973 were honored by the city.

Mr. Regester; I fail to see that there is a legal question involved. I disagree with Mr. Istrabadi's view on this. A building permit becomes affective when and only when it is passed on.

D. McClelland, East Side Neighborhood Association; This site plan was introduced after we began our long road to rezoning. Obviously we must object to this type of building in our area. We were particularly concerned with the corner in question where there is a deep drainage ditch at the front of the property, there is a lot of traffic on Atwater, and there is only one way a person can enter or leave that property. So we object first of all to having any building of such in the neighborhood after we have gone through our rezoning plan, also this poses a very serious problem traffic wise. Also this is the second site plan this woman has presented. The first one had problems and she had to re-submit it and it appeared in the paper last evening.

Don Robinson, East Side Neighborhood Association spoke from the audience but was not close enough to the mike to have his words picked up.

The motion to table the ordinance was defeated by a ROLL CALL VOTE OF AYES 2; NAYS 5. Councilwoman Zietlow and Councilman De St. Croix voted to table.

Councilwoman Zietlow; Could you tell us the rationale for the limits you have drawn here.

D. McClelland; I can not be specific, but, boundaries were set, some for obvious reasons. Obviously High Street is a very good boundary for obvious reasons and the zoning of the west border of Mitchell Street was very logical because of the way the traffic flow was and that made a divider.

Councilwoman Zietlow; This really does go back then to the original discussion at the time of the zoning ord. discussion. That we felt the natural use of the land would be similar all along Atwater. I just wonder why you feel Wayne was a natural dividing place.

D. McClelland; These boundaries were set with the help of the plan department, a Mr. Reller.

Councilman Towell; So the indication is that you're not interested in the area past Mitchell, and that the block from Mitchell to Swain on the south side of Atwater came from another source. But you are interested in having the RS single family zoning for the east side of Mitchell between Atwater and third. I think the way we had it on the zoning map, is that we went down the alley to Atwater, second street, all the way to Mitchell. We took in two lots to the alley between Mitchell and Westside Drive and went down the alley to Third St. And you object to that sort of plan, is that correct?

D. McClelland; The block between Mitchell and Swain was Mr. Reller's recommendation. It was on the basis that lot sizes and amounts of property, the size of the dwellings in certain places prevent any additional off-street parking. We felt that due to these, our neighborhood could logically only be used for single-family dwellings. There are a few properties that are larger, but for all, the most of the properties are smaller.

Councilman Towell; I used to have a person that worked for me that lived on Mitchell, and it was rooms in a small house. I suppose that exists still?

D. McClelland; Yes, you will notice in the letter to the planning commission that there are many rental properties in our area. Our one concern was that we would have a super abundance of larger houses and small dwellings turned into houses, which with all the problems of tenants that accompany them. But yes, we do have many rental properties and those would go on as they are now. They will not be affected by a change of zone.

Councilman Towell; Well, as I understand it RM allows dividing, and under RS you could still have a single unit with rooms divided for other people. So in other words you would not be getting away from that at all.

Mr. Crossman; The RS zone, has extensive family definition that none of us could spend enough time to solve. The resolution to that was to ignore it, and talk about dwelling units instead of family units. A single dwelling house could be occupied by many individuals.

Councilwoman Zietlow; There is at least one person who is opposed to it, although she is not here tonight, we have gotten a letter to that affect. I think that apparently this has never come up at any other meeting, and I think that this should at least be in the record.

Ordinance 74-64 passed by a ROLL CALL VOTE OF AYES 6; ABSTENTION
1. Councilman de St. Croix abstained.

Councilman de St. Croix moved resolution 74-45 be introduced and read by the clerk. Councilman Behen seconded the motion.

RESOLUTIONS

74-45 - Budget Transfer

Grace Johnson, City Clerk, read resolution 74-45 in its entirety.

Councilman de St. Croix moved resolution 74-45 be adopted. Councilwoman Zietlow seconded the motion.

Resolution 74-45 passed by a ROLL CALL VOTE OF AYES 6; NAYS 1. Councilman Towell voted no.

Councilman de St. Croix moved resolution 74-46 be introduced and read by the clerk. Councilwoman Davis seconded the motion. Grace Johnson, City Clerk, read resolution 74-46 in its entirety.

74-46 - Temporary Loans

Councilman de St. Croix moved that resolution 74-46 be adopted. Councilwoman Davis seconded the motion.

Councilman de St. Croix; Are these loans interest free?

Martha Sims; Yes

Resolution 74-46 passed by a ROLL CALL VOTE OF AYES 7; NAYS 0.

Councilman de St. Croix asked for a report from Tim Hodenfield, aid to the Board of Works, saying, As I understand it there is \$92,270.00 dollars remaining in the Cumulative Capital account.

Tim Hodenfield; It is in the 26 account. There is in excess of well I'm not sure of what the amount is. The Council appropriated \$50,000 for sidewalks the other moneys will be spent for repair and renovation and improvements. This was put in Federal Revinue Sharing when we came to the point this year where we realized that we could not use the Cumulative Capital funds for purposes we had intended. We shifted those cost to Federal Revinue Sharing, which is why you passed the budget transfer for the street sweeper at the last council meeting. That \$34,000 of Federal Revinue Sharing was to go for sidewalks. But we said let's use that money for the street sweeper and we will use \$34,000 of our Cumulative Capital money which is what we have been doing.

Councilman de St. Croix; There was a question of a missing \$50,000 is this right. So this council has in fact authorized \$100,000 for sidewalk construction. We have \$39,000 spent which means we have roughly \$60,000 left, and \$50,000 that went down the rat hole.

Tim Hodenfield; What \$50,000?

Councilman de St. Croix; The \$50,000 appropriated from 1973 that was not expended because the Board of Works decided unilateraly to shift it.

Tim Hodenfield; But last year at budget time all we did was appropriate \$50,000 for sidewalks. We did not go back and reappropriate it.

Tim Hodenfield; Some sidewalks were built in 1973, but not as much of the funds were used as were appropriated. We began on Henderson going from Hillside to Miller Drive is one example of one built. There were about five sidewalks built in 1973.

Councilwoman Zietlow; The question was simply was will that money be replaced?

Martha Sims; There is a reason for what we have already used. We have used \$23,958 in Cumulative Capital funds for sidewalks, because we needed it from Cumulative Capital, we could not buy the street sweeper. Where we have only used \$15,733 from Federal Revenue Sharing.

Tim Hodenfield; In other words we are going to spend \$50,000 on sidewalk construction in 1974. \$15,000 is coming from Federal Revenue Sharing the remainder is coming out of Cumulative Capital.

Councilman de St. Croix; What priority does the Board of Works take in regard to sidewalk construction?

Tim Hodenfield; We get out directives from the Council. So if the Council wants it we try.

Councilman de St. Croix; Then the next question is will the Board of Works have unexpended moneys in Cumulative Capital or Revenue Sharing to be used for sidewalk construction.

Tim Hodenfield; That is possible.

Councilman Towell; Perhaps this is being a little picky, but we all, the whole administration got together and made a commitment for sidewalks and very little has happened.

Tim Hodenfield; I disagree Councilman Towell, perhaps ^{it did} happen in 1973 as we wanted, but.

Councilman de St. Croix; Mr. Hodenfield, we have four-years given to us in terms of office. If we commit \$50,00 in 1973, and another \$50,000 in 1974, we are halving our ability to meet what we consider our responsibility if that committed in 1973 is not spent. What we are trying to say is, look we missed out on that shot, let's see if we can pick up on what we were to do now.

There being no further business
Councilpresident Ackerman adjourned
the meeting at 11:39 p.m.

ADJOURNMENT

Due to poor mike connections many
conversations were not adequately
recorded.

James S. Ackerman
James S. Ackerman, Councilpresident

ATTEST:

Pam Carper
Pam Carper, Secretary