



City of Bloomington Common Council

Legislative Packet

**28 May 2014
Special Session & Committee of the Whole**

All legislation and material contained herein.

Office of the Common Council
P.O. Box 100
401 North Morton Street
Bloomington, Indiana 47402
812.349.3409
council@bloomington.in.gov
<http://www.bloomington.in.gov/council>



Packet Related Material

Memo

Agenda

Calendar

Notices and Agendas:

- **Notice of Budget Advance** on Wednesday, May 28th, 2014 at 5:30 pm in the McCloskey Room
- **Notice of Common Council Special Session** on Wednesday, May 28, 2014 at 7:30 pm in the Council Chambers

Legislation for Second Reading:

None

Legislation and Background Material for First Reading:

- **Ord 14-05** To Amend Title 20 of the Bloomington Municipal Code Entitled “Unified Development Ordinance” (Defining “Standardized Restaurants” and Treating them as a Conditional Use in the Courthouse Square and University Village Overlay District of the Downtown)
 - Link to Res 14-03 (which initiated this ordinance) and related materials
 - Minutes from Plan Commission meeting on March 10, 2014

Contact: Dan Sherman at 349-3409 or sherman@bloomington.in.gov

Minutes from Regular Session:

- March 5, 2014 (*which includes discussion relating to above ordinance*)

Reminders of Additional Meetings of the Council:

Wednesday, May 28th

Budget Advance

5:30 pm in
McCloskey Room

Special Session

7:30 pm in
Council Chambers

Memo

Introduction of Ord 14-05 (Establishing “Standardized Restaurants” as a Conditional Use in the Courthouse Square and University Overlay Districts in the Downtown) at a Special Session on Wednesday, May 28th – Anticipate Cancellation of Committee of the Whole Scheduled for Later that Evening

Council President Neher called for a Special Session of the Council to be held next Wednesday to introduce Ord 14-05. This ordinance offers a package of amendments to Title 20 of the BMC (Unified Development Ordinance) which defines “Standardized Restaurants” and treats them as a Conditional Use in the Courthouse Square and University Overlay Districts in the Downtown. It is coming forward from the Plan Commission as a result of a request from the Council in March with passage of Res 14-03. That request and the certification to the Council of the positive recommendation made by the Plan Commission later in March started a clock on the Council deliberations, which will wind down the week of June 18th. The intent behind introducing the ordinance next week is to add a fourth week to our usual three-week legislative cycle for deliberations on this item. However, in order to give time for the Council and public to consider the ordinance (and possible amendments), the Council will, in all likelihood, decide to cancel the Committee of the Whole scheduled for next Wednesday and begin discussion of the ordinance during the first week of June.

Proposal

As noted above, the ordinance brings forward a proposal requested by the Council with passage of Res 14-03. The summary and material related to that resolution can be found online in the [Weekly Legislative Packet](#) prepared for the March 5, 2014 Regular Session. In brief the ordinance:

- Adds a new purpose to the UDO:
 - “To protect the historic integrity and unique, diverse character of the Courthouse Square Overlay and the University Village Overlay areas.”
- Defines “standardized restaurants” as:
 - “a restaurant or bar devoted to the preparation and offering for sale of food or beverages to the public for consumption either on or off the premises, which is required by contractual or other arrangement to offer standardized menus, ingredients, food preparation, employee uniforms, company logos, or exterior design.”

- Establishes “standardized restaurants” as a conditional use in the two overlay districts mentioned above, which are subject to both general and three special criteria. The latter criteria are as follows:
 - Approval of the proposed use is strictly conditioned upon the proposed use contributing to an appropriate balance of local, regional, and national-based businesses within the regulated area;
 - The proposed use must utilize a unique visual appearance that reflects or compliments the historic character of the regulated area and not project a visual appearance that is homogenous with its design elements in other communities; and
 - The proposed use will not result in an over-concentration of standardized restaurants within the regulated area.
- Adds “standardized restaurants” as a permitted use in the CL, CG, CA, and CD districts (with the exception of the two overlay districts within the CD district); and
- Adds “standardized restaurant” to various other sections of the UDO, in particular:
 - 20.05.075 – Exhibit PK-A (Parking Requirements) (and assigns standard parking requirements based upon gross floor area [GFA]);
 - 20.11.020 (Definitions) to:
 - distinguish “standardized restaurants” from “restaurants” and “limited restaurants;” and
 - to amend “Use, Change in” to establish “standardized restaurants” as a Category 1 and Category 2 in the Change of Use Table.

Statutory Constraints - Actions and Consequent Timeframes

The following paragraphs provide alternative actions and consequent timeframes which could with, rejection or amendments, push the final resolution of this proposal into mid-summer. These alternatives and timeframes are set forth in IC 36-7-4-602(b) and IC 36-7-4-607(b)-(f), which dictate the procedure the Council and Plan Commission must follow when initiating, developing, and reviewing amendments to the text of the UDO. Please remember that the Council resolution initiated the proposal with its adoption on March 6th and please know that the Plan Commission certified their positive recommendation to the Council on March 21st.

Council has 90 Days from Date of Certification to Act on Commission Response

The Common Council has 90 days from date of certification of Plan Commission action to act on the ordinance. In the event the Common Council fails to act, then the recommendation of the Plan Commission goes into effect upon the lapse of that timeframe. Those 90 days end on June 19th.

If the Common Council adopts the ordinance within said 90 days, the legislation goes into effect as any other ordinance.

Plan Commission has 45 Days to File a Report in the Event the Council Amends or Rejects the Proposal

If the Common Council rejects or amends the ordinance within said 90 days, then the legislation and an accompanying statement are forwarded to the Plan Commission. The Commission, in turn, has 45 days from that time to approve or reject that action of the Council.

If the Plan Commission approves the action of the Common Council within said 45 days, then the legislation goes into effect upon the filing of a report of approval to the Common Council.

If the Plan Commission fails to act within said 45 days, then the legislation stands as passed by the Common Council at the end of that 45-day period.

Council has 45 Days to Confirm its Amendment or Rejection in the Event the Plan Commission Disapproves that Action

If the Plan Commission disapproves the amendment or rejection of the Common Council within said 45 days, then the legislation stands only if the Common Council confirms its action by another vote within 45 days after certification of Plan Commission disapproval.

Happy Birthday Steve Volan (May 31st)

**NOTICE AND AGENDA
BLOOMINGTON COMMON COUNCIL
SPECIAL SESSION AND COMMITTEE OF THE WHOLE
7:30 P.M., WEDNESDAY, MAY 28, 2014
COUNCIL CHAMBERS
SHOWERS BUILDING, 401 N. MORTON ST.**

SPECIAL SESSION

I. ROLL CALL

II. AGENDA SUMMATION

III. APPROVAL OF MINUTES FOR: March 5, 2014 Regular Session

IV. LEGISLATION FOR FIRST READING

1. Ordinance 14-05 To Amend Title 20 of the Bloomington Municipal Code Entitled “Unified Development Ordinance” (Defining “Standardized Restaurants” and Treating Them as a Conditional Use in the Courthouse Square and University Village Overlay Districts of the Downtown)

Anticipated Discussion (among Council members) – Re: The Schedule of Deliberation for this Item

V. COUNCIL SCHEDULE

Anticipated Motion: Cancellation of Committee of the Whole Scheduled for later this evening.

VI. ADJOURNMENT

to be followed immediately by a

COMMITTEE OF THE WHOLE

(This meeting may be cancelled by a motion made earlier this evening.)

Chair: Tim Mayer

1. Ordinance 14-05 To Amend Title 20 of the Bloomington Municipal Code Entitled “Unified Development Ordinance” (Defining “Standardized Restaurants” and Treating Them as a Conditional Use in the Courthouse Square and University Village Overlay Districts of the Downtown)

Asked to Attend: Tom Micuda, Director of Planning
Patty Mulvihill, Assistant City Attorney



**City of Bloomington
Office of the Common Council**

To Council Members
From Council Office
Re Weekly Calendar – 26-31 May 2014

Monday, 26 May

Memorial Day
CITY OFFICES CLOSED

Tuesday, 27 May

4:00 pm Board of Park Commissioners, Council Chambers

Wednesday, 28 May

2:00 pm Hearing Officer, Kelly
5:30 pm Common Council Budget Advance Hearing, McCloskey
5:30 pm Dr. Martin Luther King, Jr. Birthday Commission, Hooker
7:30 pm Common Council Special Session *immediately followed by* a Committee of the Whole,
Council Chambers

Thursday, 29 May

No meetings are scheduled for this date.

Friday, 30 May

No meetings are scheduled for this date.

Saturday, 31 May

8:00 am Bloomington Community Farmers' Market – Showers Common, 401 N Morton St.
Happy Birthday to Councilmember Steve Volan!

Posted and Distributed: Friday, 23 May 2014

401 N. Morton Street • Bloomington, IN 47404

City Hall

Phone: (812) 349-3409 • Fax: (812) 349-3570

www.bloomington.in.gov/council

council@bloomington.in.gov



**City of Bloomington
Office of the Common Council**

NOTICE

The
DEPARTMENTAL BUDGET ADVANCE
has been rescheduled for

**WEDNESDAY, 28 MAY 2014
5:30 pm
McCloskey Room, Suite 135
City Hall, 401 N. Morton**

Posted: Friday, 23 May 2014



**City of Bloomington
Office of the Common Council**

NOTICE

**SCHEDULING OF SPECIAL SESSION
TO BE IMMEDIATELY FOLLOWED BY A
COMMITTEE OF THE WHOLE ***

ON

**Wednesday, 28 May 2014
7:30pm
Council Chambers, Suite 115
City Hall
401 N. Morton**

** Please note that the Council may vote to cancel the Committee of the Whole at this Special Session.*

Posted: Friday, 23 May 2014

ORDINANCE 14-05

**TO AMEND TITLE 20 OF THE BLOOMINGTON MUNICIPAL CODE
ENTITLED “UNIFIED DEVELOPMENT ORDINANCE”
(Defining “Standardized Restaurants” and Treating Them as a Conditional Use in the
Courthouse Square and University Village Overlay Districts of the Downtown)**

WHEREAS, On March 5, 2014, the Common Council passed Resolution 14-03 *To Initiate a Proposal to Amend the Text of the Unified Development Ordinance, Chapter 20 of the Bloomington Municipal Code, in Accordance with Indiana Code Sections 36-7-4-602(b) & 36-7-4-607(b) (Proposal to Protect the Character of the Courthouse Square and University Village Overlay Districts by Treating the Location or Expansion of a “Standardized Restaurants” in those Districts as a Conditional Use);* and

WHEREAS, On March 21, 2014, the Plan Commission certified its positive recommendation to the Common Council for a package of amendments to the text of the Unified Development Ordinance pursuant to Resolution 14-03, which are set forth in this ordinance; and

WHEREAS, In accordance with IC 36-7-4-607(b), the Common Council has 90 days from date of certification to act on the ordinance and, in the event the Common Council fails to do so, the recommendation of the Plan Commission goes into effect upon the lapse of that timeframe; and

WHEREAS, In the ordinary course of business, the last Regular Session before the 90 days expire is Wednesday, June 18, 2014; and

WHEREAS, If the Common Council adopts the ordinance within said 90 days, the legislation goes into effect as any other ordinance; and

WHEREAS, If the Common Council rejects or amends the ordinance within said 90 days, then the legislation and an accompanying statement are forwarded to the Plan Commission which, in turn, has 45 days from that time to approve or reject that action of the Council; and

WHEREAS, If the Plan Commission approves the action of the Common Council within said 45 days, then the legislation goes into effect upon the filing of a report of approval to the Common Council; and

WHEREAS, If the Plan Commission fails to act within said 45 days, then the legislation stands as passed by the Common Council at the end of that 45-day period; and

WHEREAS, If the Plan Commission disapproves the action of the Common Council within said 45 days, then the legislation stands only if the Common Council confirms its action by another vote within 45 days after certification of Plan Commission disapproval;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. Section 20.01.130, entitled “Purpose,” shall be amended to create a new subsection “u” and said subsection shall read as follows:

20.01.130 Purpose

“(u) To protect the historic integrity and unique, diverse character of the Courthouse Square Overlay and the University Village Overlay areas.”

SECTION 2. Section 20.02.260, entitled “Commercial Limited (CL) - Permitted Uses” shall be amended to create a new permitted land use. The new permitted land use shall be “restaurant, standardized” and shall be added immediately following “restaurant, limited service”.

SECTION 3. Section 20.02.300, entitled “Commercial General (CG) - Permitted Uses” shall be amended to create a new permitted land use. The new permitted land use shall be “restaurant, standardized” and shall be added immediately following “restaurant, limited service”.

SECTION 4. Section 20.02.340, entitled “Commercial Arterial (CA) - Permitted Uses” shall be amended to create a new permitted land use. The new permitted land use shall be “restaurant, standardized” and shall be added immediately following “restaurant, limited service”.

SECTION 5. Section 20.02.380, entitled “Commercial Downtown (CD) - Permitted Uses” shall be amended to create a new permitted land use. The new permitted land use shall be “restaurant, standardized **” and shall be added immediately following “restaurant, limited service”.

SECTION 6. Section 20.02.380, entitled “Commercial Downtown (CD) - Permitted Uses” shall be amended by creating a new cross-reference placed directly below the current cross-reference. The new cross-reference shall read as follows:

“** Additional requirements refer to Section 20.03.040 Courthouse Square Overlay (CSO) - Effect on Uses and Section 20.03.180 University Village Overlay (UVO) - Effect on Uses”

SECTION 7. Section 20.03.040, entitled “Courthouse square overlay (CSO) – Effect on uses” shall be deleted in its entirety and replaced with the following:

20.03.040 Courthouse Square Overlay (CSO) - Effect on Uses

Additional Permitted Uses other than those listed in 20.02.380:

- dwelling, upper floor units*

Excluded Uses:

- assisted living facility
- convenience store (with gas or alternative fuels)
- dwelling multifamily
- medical care clinic, immediate

Conditional Uses:

- (a) as listed in Section 20.02.390; and
- (b) Restaurant, Standardized (see Section 20.05.034 for additional Conditional Use Standards),

* Additional requirements refer to Chapter 20.05, SC: Special Conditions Standards.

SECTION 8. Section 20.03.180 shall be deleted in its entirety and replaced with the following:

20.03.180 University Village Overlay (UVO) - Effect on Uses

Additional Permitted Uses other than those listed in 20.02.380:

- convenience store (with gas or alternative fuels)

Excluded Uses for Restaurant Row:

- amusements, indoor
- assisted living facility
- bank/credit union
- bar/dance club
- billiard/arcade room
- brewpub
- cellular phone/pager services
- coin laundry
- community center
- computer sales
- convenience store (without gas)
- day-care center, adult
- day-care center, child
- department store
- drug store
- dry-cleaning service

- fitness center/gym
- fitness training studio
- hardware store
- home electronics/appliance sales
- hotel/motel
- license branch
- liquor/tobacco sales
- lodge
- medical care, immediate
- office supply sales
- park
- pawn shop
- pet grooming
- pet store
- radio/TV station
- recreation center
- research center
- school, preschool
- school, primary/secondary
- school, trade or business
- tattoo/piercing parlor
- theater, indoor
- transportation terminal
- utility substation and transmission facility
- veterinarian clinic

Conditional Uses:

- (a) as listed in Section 20.02.390; and
- (b) Restaurant, Standardized (see Section 20.05.034 for additional Conditional Use standards).

* Additional requirements refer to Chapter 20.05, SC: Special Conditions Standards.

SECTION 9. A new Section 20.05.034 shall be created and shall read as described below. All remaining sections shall be renumbered accordingly.

20.05.034 CU-12 [Conditional Use; Restaurants, Standardized]

This Conditional Use Standards section applies to the following zoning districts:
[CD] (CSO and UVO districts only)

- (a) Approval of the proposed use is strictly conditioned upon the proposed use contributing to an appropriate balance of local, regional, and national-based businesses within the regulated area;
- (b) The proposed use must utilize a unique visual appearance that reflects or compliments the historic character of the regulated area and not project a visual appearance that is homogenous with its design elements in other communities; and
- (c) The proposed use will not result in an over-concentration of standardized restaurants within the regulated area.

SECTION 10. Section 20.05.075, entitled “Exhibit PK-A [Maximum Number of Permitted Spaces by Land Use]”, shall be amended to include the below-described land use and associated required number of parking spaces immediately below “restaurant, limited service”:

“restaurant, standardized	
Under 5,000 sq. ft. GFA:	1 space per 200 sq. ft. GFA
5,000 sq. ft. GFA or greater	1 space per 100 sq. ft. GFA.”

SECTION 11. Section 20.11.020, entitled “Defined Words”, shall be amended by adding the following to the end of the first sentence of the defined word “Restaurant”: “, but is not a Standardized Restaurant.”

SECTION 12. Section 20.11.020, entitled “Defined Words”, shall be amended by adding the following to the end of the first sentence of the defined word “Restaurant, Limited Service”: “, but is not a Standardized Restaurant.”

SECTION 13. Section 20.11.020, entitled “Defined Words”, shall be amended by adding the newly created Land Use “Restaurant, Standardized” and said newly created word shall be defined as follows:

“Restaurant, Standardized: A restaurant or bar devoted to the preparation and offering for sale of food or beverages to the public for consumption either on or off the premises, which is required by contractual or other arrangement to offer standardized menus, ingredients, food preparation, employee uniforms, company logos, or exterior design.”

SECTION 14. Section 20.11.020, entitled “Defined Words”, shall be amended by adding a Land Use to “Class 1” of the “Class of Use Table”, the newly added class shall be entitled “restaurant, standardized, under 5,000 sq. ft. of GFA” and shall be inserted immediately below “restaurant, limited service”.

SECTION 15. Section 20.11.020 entitled “Defined Words”, shall be amended by adding a Land Use to “Class 2” of the “Class of Use Table”, the newly added class shall be entitled “restaurant, standardized, 5,000 sq. ft. or greater” and shall be inserted immediately below “restaurant, limited service”.

SECTION 16. If any section, sentence, chapter or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any other section, sentence, chapter, provision or application of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 17. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington, with approval of the Mayor, and after any required waiting and/or notice periods under Indiana law.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this _____ day _____, 2014.

DARRYL NEHER, President
Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2014.

MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This amendment creates a process whereby businesses defined as ‘Standardized Restaurants’ are required to obtain Conditional Use approval in order to locate in two downtown overlay districts. These districts are the Courthouse Square Overlay (CSO) and the University Village Overlay (UVO). The purpose of the amendment is to ensure balance and diversity of restaurant activity in the most historic, vibrant, and eclectic areas of the downtown; an area which is necessary and responsible for significant portions of the City’s economic development base. The amendment adds a new definition to the Unified Development Ordinance for Standardized Restaurants to clearly distinguish them from the broader land use category of Restaurants and Limited Service Restaurants. Additionally, the amendment creates specific Conditional Use criteria to provide the Board of Zoning Appeals with guidance in determining whether proposals for Standardized Restaurants do not negatively impact: 1) the balance of business activities in these overlays, 2) community character of these areas, and 3) diversity and uniqueness of restaurant offerings that help set Bloomington apart from other communities.

ORDINANCE 14-05

TO AMEND TITLE 20 OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED “UNIFIED DEVELOPMENT ORDINANCE” (Defining “Standardized Restaurants” and Treating Them as a Conditional Use in the Courthouse Square and University Village Overlay Districts of the Downtown)

Supplemental Materials

For material regarding Council **Res 14-03**, which initiated this ordinance, please see the [Weekly Legislative Packet](#) prepared for the March 5, 2014 Regular Session. It contains:

- A Summary of the Proposal
- [Res 14-03](#)
- Plan Memo
- A Map of the Courthouse Square and University Overlay Districts

Excerpts from March 10, 2014 Minutes of Plan Commission –
Re: Consideration of Text Amendments Pursuant to
Common Council Resolution 14-03

PC minutes are transcribed in a summarized manner. Recordings are available in the Planning Department for reference. DVDs are also available for viewing in the Audio-visual (CATS) Department (phone #349-3111 or E-mail address: moneill@monroe.lib.in.us) of the Monroe County Public Library, 303 E. Kirkwood Ave.

The City of Bloomington Plan Commission (PC) met on Monday, March 10, 2014 at 5:30 p.m. in the Council Chambers. Members present: Jack Baker, Scott Burgins, Susan Fernandes, Joe Hoffmann, Adrian Reid, Chris Smith, Chris Sturbaum and Pat Williams.

...

PETITIONS:

...

ZO-7-14 City of Bloomington

To act on a pending resolution from the City of Bloomington Common Council to prepare an ordinance amending the Unified Development Ordinance to create a new land use known as Standardized Restaurant. A Conditional Use permit from the BZA will be required to establish this land use within two Downtown zoning overlays: the Courthouse Square Overlay and the University Village Overlay districts.

Tom Micuda presented the staff report. The Common Council passed a resolution at their last meeting directing the Plan Commission to consider an ordinance proposal that addresses the issue of standardized restaurants. Standardized restaurants are essentially characterized by more than one location in the country plus at least one of the following characteristics: a standardized menu, standardized ingredients and food preparation, essentially a unified employee uniform, has company logos and has a standard exterior look to the business. The ordinance proposal is targeted to 2 of our 6 downtown overlays- the Courthouse Square and the University Village overlays. They are in the core of the downtown overlays. He pointed out other commercial areas that will not be regulated by the proposed ordinance. Policy documents and city actions have pointed out specific streets and neighborhoods that lie within the 2 overlay areas as being important to Bloomington and need protection. The proposal is being brought forward now in preparation for the future. There are several properties being considered for development. This is a proposal to create a Conditional Use process via a review by the Board of Zoning Appeals. It is not a ban. It does not address the retail stores just restaurants. In the other overlays and the other commercial districts the use would be permitted. This is an attempt to ensure the existing balance is not compromised. He pointed out the areas of the UDO that will be affected by the ordinance. There are 3 proposed specific criteria for

review for Conditional Use. The first is that the use would be conditioned on the proposed use contributing to a balance of local, regional, and national based businesses within the regulated area. The second is whether the visual view in the downtown of the proposed use compliments the regulated area. The last criterion is that the proposed use will not result in an over concentration of standardized restaurants within the regulated area. All other uses in the UDO are linked to the parking table and the change of use table. So, the UDO now recognizes standardized restaurants as a land use along with all other kinds of restaurants. They are just included in this table for reference. Staff's conclusion and recommendation to you is that we would note that there are different approaches to deal with this issue across the country. This is a conservative and targeted approach over a limited area that has a history of significance and protection. We are recommending a discussion process through the conditional use process. Staff recommends forwarding the case to the Common Council with a positive recommendation.

Scott Burgins asked under what circumstances one of these restaurants might be allowed in the prescribed areas.

Micuda said all Conditional Uses that come forward have to meet a certain set of criteria that are spelled out in State law. All Conditional Uses have to not be in conflict with the local Comprehensive Plan (GPP). There can't be any undue adverse impacts to adjoining property owners. There can't be any excessive traffic impacts. We are adding these 3 additional criteria to our usual 6.

Fernandes asked if the Conditional Use request would come to PC before BZA.

Micuda said they would only go to the BZA.

Fernandes said she thought the language was unclear. How would it be determined what an appropriate balance is? A homogenous appearance is not real clear to her. She also did not understand how we would determine what an overconcentration of standardized restaurants within the regulated area is. She was very positive about doing something in this line. How would I, sitting on the BZA, determine those factors? Would you consider rewriting those?

Mr. Kruzan said there are a lot of valid concerns and criticisms of the proposal including property rights. He always supports property rights, if at all possible. If this was a ban, he wouldn't support it. The other concern is how nebulous the language is. He wanted Patty Mulvihill address the language. We are following existing state law. The more specific you get would show that we are targeting chains and you're not allowed to. The BZA operates under state statutes. He pointed out some existing nebulous language. This leaves it to the community to decide. Smallwood might not be attractive today but when it was built it cleaned up the ST Semicon Superfund site. Right now if there is a standardized restaurant proposed, there is no formal public input opportunity.

Patty Mulvihill said that the statutory Conditional Use standards that the BZA weigh now leave a lot of room for personal opinions. Right now we have a healthy balance of all types of restaurants. We want to maintain that balance. We are asking for another layer of conversation when one of these uses wants to come to town. We recognize that we will be discretionary review. That is key to keeping the balance.

Fernandes likes the Conditional Use. It is a good way to allow something and make sure it fits.

Chris Smith asked what the problem that we are trying to solve is. Was it specifically aimed at the 6 parcels that are going to redevelopment?

Micuda said we trying to avoid a problem. We are looking at the areas as a whole. He put the slip up with certain properties that are coming up for development. There are properties in play for new development and some for redevelopment.

Smith asked if the lack of any discernable metric is our approach to this via the BZA to avoid lawsuits.

Micuda said this is generally consistent with how Conditional Uses are generally handled across the state and across the country. It is also consistent with what other communities in the Conditional Use process even with this use.

Mulvihill said you can't discriminate against interstate commerce to the benefit of intrastate commerce. Other jurisdictions have run into trouble if they put an all out ban on it or put a more black and white format on it. For example, if a municipality defines the Use as, "A standardized restaurant has more than 15 locations across the country." You make it clear that you are impacting intrastate commerce. Our proposed ordinance treats everybody on the same playing field. There is some question about the ordinance is constitutional. City Legal thinks it is.

Smith asked why just restaurants.

Mulvihill said we felt that the retail balance is not in a precarious position. It has been noted that there tends to be more foot traffic between retail businesses but not so much between restaurants.

Smith said that it seems today we are trying to protect the balance of restaurants in the future but we have no concern for the balance of retail in the future.

Kruzan said this is an attempt to balance. He has always supported the chain hotels coming to town. Standardized restaurants don't add to community character. A Chico's and a Talbot's add something. They are not locating all over the community. An Arby's on Restaurant Row would not add to its character.

Smith asked if we are concerned that downtown a stand alone restaurant is going to pop up.

Micuda said that he works with local and non-locals builders all the time. Our requirements don't deal with intricacies of façade. It doesn't deal with signage, façades, color schemes, logo schemes. If a standardized restaurant would want to come in would their standardized package be able fit in. Right now we don't have design review. We want to consider the impact on neighboring properties.

Smith asked if we had thought about modifying the UDO just to give us more architectural control in these two areas as opposed to this ordinance.

Micuda said that this is both a use impact issue and a visual impact issue.

Smith asked if form-based code was ever considered.

Micuda said it doesn't usually get into intricacies of façades.

Joe Hoffmann said he understands that we are not favoring local restaurants that have more than one location.

Mulvihill said there are some local restaurants that are standardized and we would not want to see a number of them in these particular overlays.

Hoffmann said balance in this ordinance seems to apply to both local and non-local restaurants. He discussed choosing food vendors who want to sell at the Farmer's Market.

Mulvihill said that the balance is meant to be a balance of local, national and regional. One of the Councilmembers asked what would happen if start seeing 15 pizza places in the overlays but they are a balance of local, regional, and national. We aren't overly worried about this and aren't going to go to that. We have not seen that particular issue as a trend.

Hoffmann asked how this would work for Accessory Uses such as a restaurant within a hotel. Would that be under the same provision?

Micuda said that his first thought is that it would be treated as a separate use rather than an Accessory Use.

Pat Williams said given the narrow purview that the BZA has in terms of input from other sources as well as not being able to discuss cases among themselves. Could there be additional approvals necessary where discussion could take place? Seems like a very narrow, small group of people making these decisions.

Micuda said Conditional Use process is supposed to end at the BZA. The PC would review the building. Usually the PC doesn't get into details like sign packages.

Hoffmann noted that BZA rulings can be appealed.

Mulvihill said that under State statute a Conditional Use has to be heard by the BZA. They realize that the BZA is a limited body that can't be lobbied. The BZA at its hearing can hear public comment.

Burgins asked (since it's not a ban) if a developer could make a case for locating one of these restaurants in one of the protected overlays. They could promise to make it fit in with surrounding architecture, use IU colors, use locally sourced food and then put it before the BZA to decide. Is that what prevents it being a ban?

Micuda said that is correct.

Baker said that we would have to make it a permitted use everywhere. (Micuda said yes.)

Micuda when you create a land use that needs to be regulated through a Conditional Use process, you also have to think about how that use works in all the other zoning districts that we have. It was meant to indicate to all petitioners and to the community that the use was acceptable in other districts.

Baker said he thought about how this could hurt us or be misused. We tend to want to cut back on government as much as possible. The demo delay added another layer. Conservation districts add another layer of protection. Is this in line with these protections?

Micuda said yes. You have to decide if there is a valid public purpose. Demolition delay is a good example.

Baker asked how this helps us. Say a chain wants to come in on Kirkwood. They want to bring in their sign package, their drive through, etc. Would this help us?

Micuda said this ordinance would start the conversation regarding the look of the façade and see if they can make it more compatible.

Hoffmann said he thought that state law would allow the BZA to impose conditions on their approval.

Mulvihill said it's fair to say that we have certain local restaurants that are standardized that we wouldn't want to proliferate in one area. We want to see a balance of everything.

Hoffmann said it sounds like balance refers to local, regional, national. He said it was like the job the Parks Board does when choosing the mix of vendors at the Farmer's Market.

Mulvihill said that the mix is not contemplated by this ordinance.

Hoffmann asked if State law allows Conditional Use permits to be granted with conditions of approval from the BZA.

Mulvihill said that the statute can impose reasonable conditions on its Conditional Use approvals.

Baker asked how this could be misused. Could the BZA keep a worthy restaurant out?

Micuda said it sounds like Baker was concerned about a possible arbitrary BZA decision. These cases will be highly scrutinized. He believes the BZA will look at the criteria very seriously. This is not just another way to say "no."

Public Comment:

Bill Prall owns Kilroy's, KRC Catering, and Smokin' Jacks Rib Shack thinks he might be out-of-balance and in over-concentration. Standardized means chains. We are trying to disguise it. If we are going to make chains jump through hoops, why not make all restaurants go to the BZA?

Skip Daley is a local consultant to private and non-profit companies. The motive of this ordinance is vague at best. Regardless of the rationale, it is damaging to Bloomington. It is leading Bloomington to be seen as a bad place to do business. Larger chains play a major role in our economy. He supports both national and local businesses. Chains downtown would be great for neighboring businesses. Our government is here to help businesses not to hinder. Competition creates additional draw. They may use out-of-town advertisers but money still comes to the community in many ways. He laid out how many other layers of economic support a business generates. Eliminating chains downtown is damaging to our youths' dream of entrepreneurship and teaching them that their degree of success is limited. He disagreed with the ordinance.

Jeff Conrad, president of Chamber of Commerce, was speaking for his members. The Chamber's membership actually supported a motion formally opposing this ordinance. There are many questions about the intent of this ordinance. They believe that the current zoning guidelines and market demands regulate the balance. There has been no discussion about the financial implications. This ordinance will make it more difficult to attract new money and businesses. Business people know business better. They do not believe that the local government or an appointed board has business expertise. The Chamber is against the ordinance.

Keith Williamson of Orion Real Estate spoke. The Bloomington Board of Realtors emailed a report to the City today. 73% of the realtors polled are against the ordinance as it is now written. Some comments included considering ways to maintain charm and historical nature of the downtown center by regulating the style of business fronts and not the type of restaurant itself. There were concerns about legality and if this ordinance might not be considered discriminatory. (See poll for other details.)

David Kamen said that Jimmy Johns has 7 buildings in that area. He said that the area is a large part of commercial area of Bloomington. He doesn't think the ordinance is legal. Only the Mayor supports this ordinance. What is the appropriate balance? Good question. Everyone seems to still have questions. Marty Spechler said that he had spoken to a law professor who said this ordinance would be illegal.

Rob McCrea, an attorney in Bloomington, looked at this issue when he was in law school. He referred to the Commerce clause. Only Congress has the power to regulate interstate commerce. That means municipalities cannot enact law to impede interstate commerce. Formula business ordinances have been struck down. This ordinance operates as a ban. When one is denied, it will be determined to be a ban. How can you decide between Scotty's and the Upland?

Larry Jacobs, Bloomington Chamber of Commerce, said there is a lot of vacant commercial space downtown. The person he was speaking for said he understood the idea and praised it to be a proactive attempt to protect downtown. The growing amount of all regulations is choking business openings.

Eric Stolberg spoke for WS Properties and in support of the Chamber. It is highly unlikely that we will ever see stand alone standardized restaurants downtown. You will see them in front of major shopping centers on a pad consisting of 1+ acres of land. They need space. They need drive-throughs. People experience the streetscape of downtown. Need to control the look rather than the use. Standardized restaurants can pay more than local restaurants. That has significant impact on a piece of property. That will affect property value. You have to concentrate on the exteriors of these buildings.

Mark Hoffman of GMS property said that two of the properties on the map displayed are GMS parcels. Anyone who has been through the Planning process understands that the appearance is already regulated. Why bring in another level? The BZA is a small group of people who are not elected. That is not fair to anyone. Downtown local restaurants outnumber standardized restaurants 5 to 1. It is your job to help and not restrict standardized restaurants.

Michael Eaton of Rubicon Capital Management opposes this ordinance as it stands. He spoke about the difference in rental rate of chain restaurant rate to local restaurants. If they lose the chain restaurant and are not allowed another one, their income decreases.

Liz Irwin with Chamber of Commerce said that they oppose the ordinance. Is there really an issue here? How do we protect our unique downtown? They don't want more burdens. Now 80% of the restaurants downtown are local. This course of action could disturb the delicate balance downtown.

Joe Hoffmann asked Patty Mulvihill to explain what the PC's role is with a City Council-initiated amendment to the UDO.

Mulvihill said (in answer to a previous question) our state and local ordinance allow the addition of reasonable conditions. The PC has 3 options. You have to certify this proposal to the Common Council with a favorable recommendation, with an unfavorable recommendation or with no recommendation. But it has to be certified in one of those 3 ways.

*****Joe Hoffmann reminded the PC that they cannot defeat the amendment today. This goes to the Council no matter what we do. We only make a recommendation on this. Hoffmann moved that ZO/Text Amendment #ZO-7-14 be certified to the Common Council with a positive recommendation. Fernandes seconded.**

Hoffmann said he would not vote to certify with the positive recommendation not because he disagrees with the spirit behind the amendment but because I find the amendment as currently written to be largely unworkable. And as a person who would have to work with it on the Board of Zoning Appeals, I'm not prepared to vote on a positive recommendation.

Sturbaum said he thought this needs some more work. It's not the end of the downtown as we know it. Passing this would not destroy the town. People fear change and regulation. There's a balance between regulation and development. We want a balance not an imbalance downtown. We want the new businesses to conform to the character of the city. We will know an overconcentration when we see it. We all want to protect community character. If it passes, it won't change much. There will be 2 more Council meetings on this. We have to be very careful.

Williams noted that about 5 years ago a committee looked at regulating formula stores and restaurants. In 2009, there were approximately 18 cities and communities that had ordinances in place regulation formula stores. The overwhelming purpose was to maintain community character and integrity. We are talking about 2 of the overlays which were intended to protect the character in those overlay districts. The ordinance may require some tweaking. It is not a disastrous impact on the community at large.

Burgins said he would pass it to the Council with a positive recommendation but discussion and education are needed. Education is needed for the BZA and the community at large.

Fernandes said that she has had 15 years listening to standardized restaurants say that they can't change to our standards. It turns out that they can do that. Existing restaurants will not be affected by this rule. She will pass this on to the Council with a positive recommendation.

Smith listed 20 communities who have passed these kinds of regulations. He doesn't want to strangle businesses. We are all here because of IU and students. We forget that some days. The majority of Kirkwood is parking lots, banks. Banks don't add anything to Kirkwood. Restaurants on 4th St. could not afford \$20,000 to put in a new grease trap which they would have to do if they wanted to change anything on their property. We

have too many commercial vacancies. Our local restaurants are there because of students but they also want to go to Jimmy John's, Potbelly, etc. Architectural control may be the answer to this. He agrees with the spirit but won't support.

Baker said it is a unique area that we are talking about. He doesn't think this will be used very much. It will start a conversation. The public can comment at BZA. It will operate similarly to the demo delay.

*****Roll call vote was taken. The ordinance was passed to the Common Council certified with a positive recommendation. (6:2)**

Next Plan Commission hearing scheduled for April 7, 2014

In the Council Chambers of the Showers City Hall on Wednesday, March 5, 2014 at 7:30 pm with Council President Darryl Neher presiding over a Regular Session of the Common Council.

COMMON COUNCIL
REGULAR SESSION
March 5, 2014

Roll Call: Ruff, Sturbaum, Sandberg, Granger, Neher, Mayer, Rollo, Volan, Spechler
Absent: none

ROLL CALL

Council President Neher gave the Agenda Summation

AGENDA SUMMATION

The minutes for the Regular Sessions of January 15, 2014 and February 5, 2014 were approved by a voice vote.

APPROVAL OF MINUTES

Andy Ruff noted that our community's primary transportation link, State Route 37 north to Indianapolis, would become a privatized highway as a result of a deal worth \$800,000,000 over 35 years. He said that this hadn't been clear in the news media, but wanted people to know that the road would be built, operated and maintained by a multinational European corporation, not the state of Indiana and not the Federal Highway Administration. He said snow plowing, removal of deer carcasses, pothole repair, signage, drainage, striping that was now done through the state would now be done by a private company. He questioned whether the privatization of this transportation link in and out of our community was a good idea. He added that this was a stealth privatization with no public input or awareness.

REPORTS

- COUNCIL MEMBERS

Ruff said that opponents had argued for years that annual gas tax revenue would not cover the expenses of building and maintaining the road, but the state argued that this could be paid for with traditional funding – annual allocations of revenue.

Ruff noted the long term lease of another public asset -- the toll road in northern Indiana. He said that the lease payments could have been used for anything but the initial funding for I-69.

He said the Indiana Finance Authority had voted earlier that day to approve this measure.

Neher announced that he would be holding a constituent meeting on March 8, 2014 in the McCloskey Room at 11:00 am and urged citizens to attend.

There were no reports from the Mayor or City offices at this meeting.

- The MAYOR AND CITY OFFICES
-
- COUNCIL COMMITTEES

President Neher announced the formation of a Special Committee on Boards and Commissions which would be comprised of Council members Granger, Neher, Volan in addition to City Clerk Regina Moore and Deputy Clerk Sue Wanzer. The first meeting of the Special Committee was announced for March 12th at 6:15 pm in the Council Library.

President Neher called for public comment.

- PUBLIC

Nathan Shipley from Morgan County said he worked for Energy Shield, an energy audit company from Indianapolis that guaranteed energy savings for buildings. He noted he would be contacting people in this area for audits.

Dave Schliebaum talked about homeless persons who stayed in an east side laundromat. He said he was concerned that some individuals were not interested in going to agencies for help and shelter. He provided the council with a list of suggested actions that might alleviate the situation.

George Brooks spoke on minimum wage issues and economic issues.

Glenn Carter announced the Ubuntu shelter group meeting. He said the group was working on a year round low barrier shelter for homeless that would extend the services of the Interfaith Winter Shelter. He said it was unrealistic to expect people to cure their own mental illnesses and noted that some people die from exposure to the elements. He said that to stop drinking without help is life threatening and could cause seizures.

Kay Bull played the guitar and sang a parody to "Good Time Charlie's Got the Blues" entitled: "Old Bloomington Has Got the Blues"

There were no appointments to Boards or Commissions at this meeting.

It was moved and seconded that Resolution 14-03 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, noting that there was no Do Pass recommendation on this item.

It was moved and seconded that Resolution 14-03 be adopted.

Tom Micuda, Planning Director, and Patty Mulvihill, Assistant City Attorney gave an overview of the resolution.

Mulvihill said that although changes in Title 20 would usually start with the Plan Commission, state law also allowed zoning changes to be initiated by the council. She said this resolution asked the Plan Commission to begin the process of preparing an ordinance that would change the zoning law. She said the Plan Commission would then certify the proposal with a favorable, unfavorable or no recommendation to the council, which would then be discussed and possibly adopted as an ordinance. She noted that would include at least two public hearings in addition to the public process in the Plan Commission.

Micuda showed slides that defined standardized restaurants and showed the proposed areas affected with maps of the overlays themselves, with relation to the downtown zoning districts and with relation to the entire city. He explained the history of the city's attention to policies and activities with regard to these overlays which recognized the areas as unique resources worthy of protection and continued vigilance. Micuda talked about the timing of the issue and said that there were several properties that would be developed very soon that would have an effect on these overlays. He noted that the proposal was not a ban, did not address retail stores, and affected only two of the six overlays -- a small percentage of the city.

Micuda discussed the concept of Conditional Use Process, the difference from Permitted Use, Conditional Use Criteria and the community discussion that would take place at the Board of Zoning Appeals with each decision being unique to the particular situation.

Micuda outlined the specific criteria proposed in the ordinance as contribution to appropriate balance of businesses in the area, visual appearance in the particular surroundings, and the concentration of standardized restaurants within the area.

Micuda noted that this was just the beginning of the process of conditional use, that it covered a limited area of the city that had a historic significance and was worth protecting, that this was a case of balancing and monitoring, and that the decisions would take place on a case by case basis.

Volan asked for an overview of what documents would be produced and what actions would happen from this point on.

Micuda said that if the resolution was passed by the council, the Plan Commission would discuss the need for an ordinance, the scope of the

APPOINTMENTS TO BOARDS AND COMMISSIONS

LEGISLATION FOR SECOND READING AND RESOLUTIONS

Resolution 14-03 To Initiate a Proposal to Amend the Text of the Unified Development Ordinance, Chapter 20 of the Bloomington Municipal Code, in Accordance with Indiana Code Sections 36-7-4-602(b) & 36-7-4-607(b) (Proposal to Protect the Character of the Courthouse Square and University Village Overlay Districts by Treating the Location or Expansion of a "Standardized Restaurants" in those Districts as a Conditional Use)

affected area, applicable definitions, the appropriateness of the conditional use process (rather than a prohibition or no process at all), and any standards for evaluation of conditional uses. He said the discussion, decisions or recommendations would then come to the council for further action.

Volan asked what the status of the language was, who was writing it and when it would be made public. Micuda said that draft language would be submitted to the Plan Commission for their March 10th meeting, the first discussion of the issue.

Spechler asked about the legality of the approach to conditional zoning. He asked Mulvihill to respond to statements made by a professor at the Mauer School of Law. Spechler would not identify the person, but said he wrote:

"I found the Urban Lawyer article you referred to and skimmed it. I'm unsure why Patty thinks it supports enacting the ordinance. The only similar case to be heard in the federal courts (cases in state courts other than Indiana are irrelevant) struck down the ordinance as unconstitutional. The only similar case to be heard in federal court struck down the ordinance as unconstitutional."

Spechler said the legality issue should be dealt with.

Mulvihill noted that Council Attorney/Administrator Dan Sherman provided the article to the council. She said that there were two cases that were heard, one had a problem with the ordinance and one didn't. She said there were multiple levels of courts under the Supreme Court, and she added that this issue had never been litigated in the 7th Circuit, the Bloomington jurisdiction. She said in reviewing case law, the legal department felt there was a valid legal argument that our ordinance would be constitutional and would pass scrutiny.

Neher asked staff to address the use of restaurants versus general retail establishments. Micuda said restaurants were more of a specific destination rather than a retail point that would distribute patrons. He said that restaurants presented the heaviest activity point.

Neher asked about the area to be regulated and if the evaluations were being made for a single overlay or the combination of both overlays together. Micuda said there was not an automatic answer and that in some cases the decision might be made with regards to a one or two block area or a corridor in addition to the overlay as a whole.

Neher asked about this being a conservative approach, and asked about other communities. Micuda said communities' approaches ranged from fast food restaurants, to a combination of retail and restaurant, but most were in historic or other areas that needed to be protected. Mulvihill said that the staff found 22 ordinances in the US that dealt with this issue.

Sturbaum asked if Micuda would consider adding information from the Preservation Plan that would cite the uniqueness of the areas in the ordinance. Micuda said it could be considered.

Volan asked if there was an ordinance written at this point. Mulvihill said there was an uncirculated draft of the ordinance. Volan reiterated that a resolution did not require two hearings, and added that that point was often overlooked. Volan asked if the Plan Commission would send the matter back to the council as an Ordinance (that would have two readings and hearings). Sherman said ordinances typically included two hearings over two meetings. Volan asked if this matter would come back before April. Neher said the schedule for upcoming legislation had not been determined at this point.

Rollo asked if the Plan Commission would take more than one hearing. Micuda said that the matter was up to the Plan Commission.

Spechler asked if the phrase “avoiding overconcentration of standardized restaurants in the regulated area” would discriminate against standardized restaurants in favor of local restaurants. Mulvihill noted that there were local standardized restaurants. Spechler asked if it discriminated against standardized restaurants and for non-standardized restaurants. Mulvihill said she wouldn’t use the word “discriminate.” She said it set a higher level of scrutiny for standardized restaurants.

Public comment brought the following statements:

Liz Irwin from the Greater Bloomington Chamber of Commerce spoke on behalf of the members who could not make the meeting. She said the members were asking if there was an actual problem or a specific threat that set this legislation in motion. She asked why the threat hadn’t been communicated. She said that this was not a new issue, and that vacant properties themselves were not a threat. She asked why this resolution was being pushed for a vote without what she called proper time for a response and input.

She said the legislation sought a solution to a problem that did not exist. She said it placed additional controls on natural market fluctuations and that unnecessary restrictions on business would cause uncertainty and would detract from the appeal of doing business in Bloomington. She urged the council to vote against the resolution, to take a step back from the process and to appreciate the burdens already placed on business -- parking changes, panhandling, cleanliness, and criminal trespassing. She asked the council not to vote against their neighbors and family members.

Scott Tibbs, city resident, spoke in support of property rights and the free market. He said he had serious concerns about the ban, noting that despite the conservative nature of the legislation, it was, indeed, a ban. He said it was not the role of government to decide for private property owners what they should have on their property, or to decide what consumers should choose to patronize. He said legal or not, the proposal violated the spirit of the Federal and Indiana State Constitutions that made it clear one class of people should not be favored over another. He added that there was no problem on Kirkwood in that Taco Bell, Dunkin’ Donuts and McDonalds all failed. He called this legislation an overly aggressive intrusion into the private market.

Tom Allman said the market should decide what restaurants would be in the downtown, not the City of Bloomington. He said the city had no authority to tell people what to eat and asked that the council put this to rest.

Dave Kamen, President of Bryan Rentals, noted he appreciated previous help from the Planning Department. He said he had rebuilt some of the historic buildings on Restaurant Row. He said the issue was on a ‘fast track’ and caught people by surprise. He said the legislation was not posted, there was no link to the legislation on the planning website and that he had to come to city hall in person to obtain a copy of it. He said that this legislation was improper use of authority; it singled out restaurants and bars, and was discriminatory. He said the city should take a step back. He asked who had the training to determine the right percentage of standardized restaurants to outguess market demand. He said he owned seven buildings in the overlay areas, and debated the notion of it being a small area. He said the proposal harmed local franchise holders that lived in the community. He asked if there would be remuneration for property owners who would be damaged by this “condemnation” and asked who would determine the damages. He said he would like to have the draft copy of the ordinance that would be considered by the Plan Commission on March 10th so that people could

understand the issue. He asked that the process be slowed so the community could get it right.

George Brooks said he agreed with the spirit of the proposal. He added that care needed to be taken with wording so that it didn't target specific individuals. He said homogenized culture was not a desire, but that players were the ones with the most money in the market economy. He said that most corporate chains were not franchised, but corporately owned with decisions made in far away places. He asked the council to read *The McDonaldization of Society* to see this phenomenon. He added that he trusted the practice of democracy, but not in the hands of fewer and fewer individuals.

Dave Harstad said he was a local real estate broker who represented several businesses in the overlay districts. He said he was speaking for future clients. He said he was in favor of the spirit of the proposal and said that the way our downtown looks and feels is important for tourism and other economic reasons. He said that market forces alone should not decide what businesses go where. He said the city should objectively study identifiable standards that create difficulty for the community such as trash, noise, parking, loading, or hours of operation rather than looking at the balance between a local and standardized restaurants.

He said having ad hoc uncertain standards for regulation would create real hardship for businesses. He said it was easier to have tough standards that are known rather than the unknown and uncertainty in leases. He added that this would contribute to an already difficult environment for restaurants. New regulations on grease traps had already caused vacancies to be advertised specifically "not for restaurants." He said things to work on to preserve the character of the downtown would be stricter sign and awning regulations, maintaining aesthetics, and the study of the impact of certain types of restaurants.

Scott Davidson with Old National Bank said that the ordinance was an unnecessary burden for clients of ONB who are property owners. He said the downtown had vacant storefronts, and this ordinance would increase the risk of vacancies and property structure decline. He said ONB property in the overlay area was on the market, and said an additional layer of complexity was a detriment in the value of their unique property. He said that the city should continue to give other downtown issues priority instead of focusing on a problem that didn't exist.

Eric Stolberg, President of WS Property Group and Chamber member said he was asked by the Chamber to address the council on this specific topic. He applauded Spechler's statements and said that some people believe that this proposal is a clever work-around for a ban. He said that the non-standardized restaurant owners don't and can't pay as much rent as a standardized restaurant. He said the latter had tremendous assets, a lot of value and generated high volume. He said he believed that it was better to have a mix of establishments and said the Chamber would be conducting a study that would show the number of each type of restaurant in the proposed area. He said the study would find that there were fewer standardized restaurants, and he said the Chamber would share the results with the council. He said the difference in rents paid had a significant impact on the value of the property, and would trickle down to assessments, taxes, and the ability to garner tax revenues. He said properties were valued on the income approach which was an indication of the value of the property. He said the issue was complicated but real. He said the proposal was a solution to solve a problem that is not really there, but appreciated the council's willingness to work with others on this issue.

Jim Murphy, President of CFC Properties, spoke of what he called a tight timeline on this issue. He said the council asked good questions of staff and he was glad to know that the issue was not completely finished.

He said the public had been nervous and discomfited by decisions that came from the city administration without complete input from the business community. He asked why this proposal was necessary and said his experience was that national chains would not come to the downtown because they required a certain amount of traffic, signage, store frontage, parking, access, location and population. He said that CFC wanted to see the community character preserved, but he did not believe that time and resources should be spent on this non-issue. Murphy said the city did not have a good track record on lawsuits, and said that Spechler's question was germane.

Council comments:

Sandberg said it was useful to hear community feedback, especially from the business community. She noted the task at hand was to move this discussion to the Plan Commission, and that it was just the beginning of the larger discussion. She said there didn't need to be a looming threat for a city to be proactive in making sure that there were guidelines to help create and preserve the culture, amenities and type of community that are valued as Bloomington. She again noted that this proposal would not be a ban and would not cover the entire city. She disagreed that the free market was always the best arbiter of community life and culture, noting that the residents and citizens determine that.

Granger said she agreed with Sandberg. She added the need for all to think about what our future city would look like. She said that there would not be an impact on existing businesses.

Spechler said he liked the spirit of the proposal, and that the character and appearance of the downtown should be discussed. He said he would vote to send this issue to the Plan Commission, but he was putting them 'on notice' that he would vote against any proposal because he thought that, absent a reassuring legal opinion, the city would be sued and would lose in court at tremendous expense to the city. He said his legal friends told him that losing a case like this, would incur a legal bill and compensation to pay of about six figures. He said the city could not afford that type of risk for a benefit that seemed to him to be marginal. He quoted a leading authority (unnamed) at the Maurer School of law from an email to Spechler:

"What we probably cannot do is impose different rules on national chain restaurants than we do on local ones. It infringes the commerce clause by discriminating against interstate business entities in favor of local ones and implicates both the legal protection clause and the state's equal privileges and immunities clause. To be fair, that doesn't mean a lawsuit would necessarily win."

Spechler repeated that the city could not take this risk and that the benefit was somewhat marginal. He said he'd like to see the Plan Commission consider a reduced version of this that would allow Bloomington to continue to regulate external appearance of all restaurants in accordance with the historic and pleasant appearance of the overlay. He said that right was legally protected, but that this proposal would discriminate against the standardized chains and was absurd and unnecessary. He said he didn't want to argue with the benefits of such a proposal, but that surely it was a marginal benefit. He said that since Bloomington was a tourist economy, standardized restaurants were familiar to people, and we should not tell tourists not to patronize them. He said Bloomington should offer a full range of choices. He said it was a waste of time to consider this further unless he could be reassured by a very firm outside legal opinion that this would be okay. He said Mulvihill's statements did not assure him of this.

Resolution 14-03 (cont'd)

Volan stated that resolutions did not create law or bind anyone. He said this resolution would ask the members of the Plan Commission to address the issue. He said that zoning existed for a reason, allowed for the scrutiny of a business -- its value to the community, ownership, and the impact of circulation of money in the community from that business.

He said that the criticism of the council's 'fast track' timeline had a real basis and that he had continually criticized it himself. He said the council needed to rethink the way it dealt with legislation and the timing of discussions in order to not inconvenience the public. He cautioned the council members and public about sticking to an issue rather than making comments personal in any way.

He noted that the overlays were within his councilmanic district, and noted that local toil and sweat built up this area to make it attractive to locals and tourists. He said the discussion about the future of this area was worth having, and said he believed that the issue would have full vetting before the council and the Plan Commission. He said the resolution had the limited intent of allowing the conversation to take place. He said his support of this resolution did not mean he would support an ordinance that might follow.

Rollo said that this resolution was about initiating a proposal about regulating standardized restaurants, not a decision on the ordinance itself. He agreed that the administration and council wanted to protect these overlay areas, and that the vitality of the area was also important to the public. He said he wanted to safeguard against an ambiguity of process and capricious nature of permits. He noted his support for the resolution did not assure his support of an ordinance.

Ruff noted this was not a hearing on an ordinance, and the process for this issue was not on a fast track. He said that the public comments had brought attention to many good points that he planned to look into during the process. He reiterated that there would be more opportunities for public engagement in the issue. He said impact on property tax revenues, trends of increases in standardized businesses in the past few years, rental rates of standardized and non-standardized businesses, impact of vacancies in the overlay and the impact on other economic factors were all things he wanted to ponder.

He said that the statement about violating interstate commerce regulations bothered him because the proposal was written specifically to avoid such an issue; local standardized restaurants were treated the same as non-local standardized restaurants. He noted a statement about the proposal making things more difficult for certain restaurants, and said he didn't agree. He said the point was to give the community a more formal option for having input in creating the mix in the downtown that they desire and have built so far.

He thanked speakers for their thoughtful statements.

Mayer noted again that passing this resolution was setting a process in motion for the Plan Commission to consider amending the city's Unified Development Ordinance on March 10, 2014. He noted also the process had more than one opportunity for the public to make their views known. He said that to move this to the Plan Commission would allow the community discussion to take place.

Neher said the discussion on this larger issue was started in 2009 and then stopped. He said he was not surprised that it had been restarted, and the discussion would take place on the specific language of the ordinance. He said the comments about the worthiness of the discussion were appropriate as indicated by the broad statements made by many participants in the night's discussion. He said comments about taking the time to find answers were appropriate and that the process was structured to do just that.

He said the process did not need to start with the council but could have started with the Plan Commission. That would not have afforded the opportunity for the initial discussion and public statements made at the night's meeting. He noted a statement on maximizing property value and added that he felt a healthy local economy was desired by all. He said it did a disservice to this and previous councils to think that this was not at the forefront of their minds. He said that the council was totally invested in making Bloomington an attraction.

Resolution 14-03 received a roll call vote of Ayes: 8, Nays: 0, Abstain: 1 (Spechler)

Ordinance 14-03 To Rezone a 6.96 Acre Property from Residential Core (RC) to a Planned Unit Development to be Known as the B-Line Neighborhood and Approve a Preliminary Plan and District Ordinance - Re: 901 W. Cottage Grove Avenue (Habitat for Humanity of Monroe County, Petitioner)

LEGISLATION FOR FIRST READING

Ordinance 14-03

There was no public comment at this portion of the meeting.

PUBLIC COMMENT

Dan Sherman, Council Attorney/Administrator, noted that there was a Committee of the Whole meeting scheduled for March 12, 2014 that was not actually needed. It was moved and seconded to cancel that meeting. The motion was approved by a voice vote.

COUNCIL SCHEDULE

The meeting was adjourned at 9:52 pm.

ADJOURNMENT

APPROVE:

ATTEST:

Darryl Neher, PRESIDENT
Bloomington Common Council

Regina Moore, CLERK
City of Bloomington

