

CITY OF BLOOMINGTON
2215 WEST OLD SHAKOPEE ROAD
HENNEPIN COUNTY, MINNESOTA 55431

CITY COUNCIL MEETING

Approved Minutes
Study Meeting
Meeting #3

7:00 p.m.
January 27, 2003
Fire Station #1

Call to Order Mayor Gene Winstead called the meeting to order at 7:12 p.m.

Roll Call Present: Mayor Winstead, Councilmembers D. Abrams, S. Elkins, H. Harden, S. Peterson,
and V. Wilcox.
Absent: M. Fossum.

Item 3.1 Motion was made by Abrams, seconded by Peterson, to reappoint Bruce Torgerson, Maria Ah Sani, and Corrine Shepherd to the Human Rights Commission to new two-year terms expiring on December 31, 2004. Motion passed 4-2 (Harden and Elkins temporarily absent).

Study Item #1
High Intensity/Density
and Mixed Use
Development

Senior Planner Bob Hawbaker provided the staff report indicating that this item is being driven by two issues. The first one is the McGough Development and the impact the Light Rail Transit (LRT) line is having on east Bloomington. He stated that staff is suggesting another Comprehensive Land Use Guide Plan Designation that is specifically oriented towards transit-friendly development - large redevelopable parcels located near the LRT line. He stated that a new land use designation along with the zoning ordinance rewrite would provide incentives for much higher density developments. <He introduced Stephanie Warhol who joined the City in December as an Assistant Planner.>

The second issue Hawbaker explained is more market driven and stated that staff has received a development inquiry about a fairly high density, although not so tall, residential prospect on I-494. He stated that the City doesn't have a zoning district that would allow the kind of residential densities that are being proposed. He stated that 60 units per acre is about the most, even with the 20% bonus in a Planned Development. He stated that the space would allow these types of development but that they would still generate a significant amount of traffic and would probably require improvements to the sanitary sewer system.

Elkins suggested that the 35W corridor and the 494 corridor are just as important as the LRT corridor in terms of transportation and transit, as they are more strategically located, not just in Airport South.

Winstead commented that 94th Street and 35W would be redeveloped earlier than the Southtown area.

Abrams stated he was comfortable with the direction staff is suggesting but that his concern is striking the right balance between guiding development and inhibiting development. He wouldn't want to see sites guided so narrowly and unrealistically that developments other than high density couldn't be done. He stated he found the McGough Development concept appealing and supported a designation that would give developers sufficient flexibility in their developments so long as it remained true to the big picture.

Hawbaker stated that a very high density residential district could be a specific Comp Plan Land Use Designation and that the policy could be that it is along 494, 35W, and the LRT Route but that it shouldn't be at Old Shakopee and Normandale.

Discussion was that the Guide Plan would designate where those types of high-density residential development should occur and that design requirements could be included in the zoning ordinance.

Abrams stated that the Council needs to decide what it would like to see along 494 and inquired how high density residential would impact traffic on 494 and would it be a net winner or loser for the City relative to other kinds of development that could occur along 494 with respect to property taxes.

Harden suggested that staff look at Edinborough as an example to see what effects it has had on traffic and revenue for the City of Edina. She believes the City should concentrate on the types of development that do generate income for the City to relieve some of the burden on property taxes.

Bernhardson explained that there are different quality pearls along the "string of pearls" and that traditionally, the ones at 494 and in the Airport South Area have been market driven. Developers have stated that although the market has determined what will work, they can't afford to do it under our zoning ordinance. He stated that Council needs to decide if they want to raise those limits to allow different developments. He stated that developing areas away from 494 on American Boulevard or along 35W, Cedar Avenue, and 169 may require some assistance. He stated the City may have to look at partnering with developers in order to get a development to fit the Council's vision of a certain area.

Community Development Director Larry Lee stated that the Airport South Area was left blank on the Comp Plan until the Joint Airport Zoning Board question is resolved. He stated that both in the terms of a developer and the need to designate a land use for that area provides a good opportunity to work first in the Airport South Area.

Peterson suggested that around the LRT station points there should be increased attention to the pedestrian orientation in those areas.

Bernhardson inquired as to how much the Council would consider bumping up the density in the Airport South Area and at France and 494. He added that the area from Centennial Lakes down to Edinborough was the result of a Tax Increment Financing (TIF) District.

Hawbaker stated that since staff has had discussions with a developer that has done projects in excess of 100 units per acre, that is where they are looking, between 100-120 units per acre.

Wilcox stated that the City needs to be in a position to lead and control what gets developed along 494 and American Boulevard and not just respond to a developer who is knocking at the door. He stated that increasing the density of those properties would increase the property value to the developers. He supports the idea but believes it should be considered more broadly.

Winstead stated that something needs to be done in the Airport South District that could be overlaid to other areas when the need is there. He stated that the appropriate elements or tools need to go down the Ring Road along 494.

Hawbaker explained that it's trying to find a balance in guiding the private market to do the kinds of developments that the Council wants and that it could be done with minimum lot sizes, minimum densities, and/or requiring a mix of uses.

City Attorney Dave Ornstein stated that it could be an impediment to future redevelopment efforts where the City is going to facilitate the development and has to use the power of eminent domain.

Council requested staff also look at the primary nodes along 494 and 35W for increased density and transit friendly developments.

Elkins stated that the McGough Development could be used as a template for other areas in Bloomington.

Larry Lee proposed and requested Council's input on a process to wrap up the strategic planning work that has been done by the Council. He described the four steps in the process as follows:

1. Where
Four key areas already identified for redevelopment in the city are the Oxboro Area from 94th to 99th Street, Airport South, the area around Lyndale Avenue and American Boulevard, and France and Old Shakopee Road. He stated most of the current resources available to Council would be absorbed over the next five years on these four areas alone so that if Council wanted to move on one of the other nine pearls or sites, one of these four on the priority list might have to be dropped temporarily.
2. How
Suggested Council gain a consensus on the reasons and conditions for doing redevelopment in order to make decisions based on the real purposes behind redevelopment. He stated the Council needs to determine if and when and the Council will use eminent domain, a policy for relocation, a policy for streetscape, and the degree of public involvement.
3. Resources
Public-initiated redevelopment requires both money and staff resources. As the priorities for where and how are developed, staff needs to look at what it will cost, how does it compare with current resources, and will report back to Council with whether or not it works and if not, how to fill in the gaps.
4. When
A five-year written plan combines the policies, locations, and resources with a time schedule. It verifies the Council's support of the final strategy, communicates the Council's intent to the various stakeholders who are interested in knowing the City's intent, and lays out the long-term plan.

Winstead inquired as to what effect the current city hall site and related resources might have on the list of priorities.

Lee stated that the Request for Proposal for the existing city hall specifically states that no public subsidies are expected on that site so it could proceed independently from the rest of the pearls. However, what occurs along with the new city hall/arts center redevelopment affects the area that is identified as potential redevelopment area #6 (area bounded by 98th & Old Shakopee Road/Penn/Logan Avenue) and that it could be moved up on the priority list if Council wants to keep the momentum going in this area.

Peterson sees the benefit of having a long-range plan in place is that the City could be in a position to financially take advantage of an opportunity that might present itself at a more reasonable cost.

Winstead stated that if the City does identify sites that are going to be combined, it needs to be ready to act in an expeditious fashion so that the area can be informed of their fate rather than cast a shadow over an area. He stated the prioritization should occur in groups.

Abrams stated that the City needs to be realistic in listing its priorities so that it doesn't over plan whereby some neighborhoods are given unrealistic timetables that the City cannot meet due to a lack of resources, etc. A negative situation could result if property owners thinking they're going to be acquired don't keep up their property, when in reality, they may not be acquired for a very long time.

Harden stressed continuing a communication and public relations campaign going so that the residents are kept informed of the City's 5-7 year plan for redevelopment in the areas where they may be impacted.

Study Item #2
continued

Bernhardson stated that the Bloomington Briefing would continue to inform residents about the City's "string of pearls" for redevelopment and that the Geographic Information Systems (GIS) capability on the City's website would keep the citizenry informed, as long as they make the inquiry.

Elkins stated that although the Southtown area is a high priority for him, he can't see the City putting in anything more than planning dollars into it over the next 5-7 years but that it needs to continue planning and working on getting the zoning in place for future opportunities.

Bernhardson stated that staff would bring back a list of priorities grouped along the lines of Bloomington's legislative priorities based on Council's discussion for the February Council study meeting.

Peterson suggested that staff develop a list of criteria that could be used for objectively selecting redevelopment sites so that they could be compared by site features and why or why not they would make good candidates for redevelopment.

Study Item #3
Trunk Highway 169
Draft Environmental
Assessment Comment
Letter

Deputy Director of Public Works Jim Gates provided the Draft 169 Environmental Assessment (EA) comment letter stating that the Minnesota Department of Transportation (MnDOT) would be coming with the final layouts for T.H. 169 at Pioneer Trail and at Bloomington Ferry Road in the latter part of February.

Elkins stated the letter was well written and conveys the neighborhood's concerns.

Harden concurred and inquired if MnDOT would be in disagreement with the City on any of the comments.

Gates stated that the City has a good working relationship with MnDOT and doesn't anticipate anything controversial.

Peterson asked Gates to comment on the portion of the letter pertaining to the Highwood Bridge.

Gates replied by showing the environmental document being analyzed that shows the full build with the bridge over 169 at Highwood Drive. He stated that the full EA analysis includes the bridge over Highwood and that the City is suggesting supporting the interim improvement that does not include a bridge over Highwood but has the interim connection to that local area network adjacent to the 494 corridor. In conjunction with the ponding that replaces the ponding being impacted on the south side of Town Line, the City supports an Early Acquisition Program and a berming protection of the remaining homes in the Ensign Avenue neighborhood.

Abrams stated that as Council didn't take a position for or against the bridge in its previous letter, it should use similar language now adding that the City is still waiting for additional information.

Gates stated that an amended letter would be brought back for Council approval on February 3, 2003. He stated that as soon as the comment cards are available from the January 16 open house, Council would be provided copies. He added that MnDOT will be providing additional study information regarding the impacts on some adjacent side streets as part of the 169 Corridor Project. However, the area of 84th & Normandale would be a separate billing.

Study Item #4
2003/2004 Special
Revenue Fund Budget -
Communications

Winstead stated that although the public comment period is not usually open during study sessions, he had previously agreed to allow three individuals to address the Council on this item. He stated that action would not be taken by the Council tonight but would be continued to another meeting, at which time more public input could be taken.

Communications Administrator Diann Kirby presented the staff report on the Communications Budget and Public Access Proposal developed by staff that included the following information:

1. Background on Public Access Proposal
2. City's Objectives in the Communications Budget

Study Item #4
continued

3. 2002 Bloomington Public Television Programs
4. 2002 Internal vs. External Shows
5. Core Services
6. Facility Hours
7. Proposed Guidelines
8. Staffing
9. Frequently Asked Questions

Cyndi Rollins, Finance continued the presentation providing the following information:

1. Special Revenue Funds
2. Communications Budget

Peterson inquired if the franchise fee could be treated as a revenue in the General Fund and if the Communications Budget could be included in the General Fund.

Rollins indicated yes to both and continued presenting:

3. Budget Options A & B
4. Staff Recommends Option B

Harden inquired if under the Proposed Guidelines, there was anything to prevent the existence of a BPTV Board of Directors or anything to prevent that group from making the decisions as they are now about their programming. She inquired how BPTV's concerns regarding censorship would be addressed.

Based on past production, Bernhardson stated that to the extent that their programs fit the Guidelines, their programming should continue.

Kirby stated that BPTV's First Amendment rights would be addressed in the Guidelines and that other metro area cities are running public access television and have been successful. She stated that Sections 3.5, 3.6, and 3.7 of the Draft Guidelines address programming issues.

Bernhardson stated that programs would be reviewed in accordance with the Guidelines and that an appeals process would be in place to handle any disputes.

Abrams commented on the following sections of the Guidelines stating that he believes the rules appear to be fair to everyone:

1. Section 2.1 (Agrees with it but suggested adding something to address the concept that if multiple demands are put on the same time and space, that it gets spread out to the users in a fair way and not given to the same producer routinely.)
2. Section 3.4 (Agrees with concept but suggested that a governing principle be applied to spread out the prime time programming.)
3. Section 4.6 (Suggested that the wording should say, "No political programming will be aired on Bloomington public access television while polls are open or within 24 hours before polls open in Bloomington.")

Winstead inquired what protection the City has from copyright claims even though it's the responsibility of the producer. He also inquired as to what recourse would the City have regarding damage to City equipment by a public access producer.

Ornstein replied that staff would explore what other cities have done to protect themselves on this issue and that individual agreements would be drafted with individual producers. He stated that the producers would bear the legal responsibility in copyright matters. It was stated that the City's trained staff could be helpful to the producers in making them aware of the laws in this area.

Kirby stated that the City would be self-insured but that the producers would be taking responsibility for the use of the equipment and studio.

Peterson inquired as to where the City would draw the line in the future so that the City provides only what it is in a position to provide.

Kirby stated that the City would be providing a well-equipped studio and a trained technical staff that could assist and train producers in their productions and that the function of setting up and breaking down of the sets as well as operating studio cameras could be performed by volunteers.

To answer Wilcox's inquiry regarding what involvement the BPTV Board has had in previous discussions with City staff regarding the upcoming combining of the BPTV studio into the City facility, Kirby clarified that the BPTV staff, not the Board, was involved in the discussions. It was also stated that the BPTV Board could continue to operate as an independent entity and that the City would be providing the studio space so that their producers could continue as producers of shows. Wilcox stated that a board may be required to ensure that the governing principles are followed regarding program scheduling, etc.

Regarding Section 3.4 and program scheduling and availability, Harden suggested that the intention of the language should clearly state that equal availability would be given to producers and that the governing principles would also address this issue.

Council stated that the programming schedule of public access be posted on the City website in addition to what is posted on Bloomington Channel 14.

Harden expressed a desire that if the volunteer BPTV Board of Directors were to continue as an organization, that the City defer the job of program scheduling to them and that the City would only handle if needed. She stated that she sees the City maintaining Channel 16, BPTV, with the same sense of freedom of access, speech, and programming that it has now and that City staff not get into micromanaging it, preferring that they make most of the decisions. Wilcox concurred.

Kirby stated that the City's intention is not to regulate the content of public access television but that City staff should make the determination regarding scheduling.

Winstead stated that a board could be established to help outline the governing principles or a governance board could be established to ensure that those principles are fair.

Abrams stated that the accountability of how taxpayer money is spent with regard to public access television would be properly addressed as staff is proposing, as the City is the public and that the voters can take action to make a change if they don't approve of how the City runs it. How programming hours are allocated and how that public money is spent shouldn't be dictated by a private club.

Speaker #1: James Touchi-Peters, Vice President of BPTV

He stated that a private club could act as a buffer for the City in deciding what community standards are. He stated that a self-standing, non-profit organization like BPTV does act as a legal buffer between a municipality and whoever decides to get litigious against the public access facility. He stated that in the 26 years the organization has existed, no real litigation has ever brought against it. Regarding the proposed Operating Rules, he provided the following input:

1. Section 4.1 (He stated that there is nothing in Minn. Stat. §211B.01 that pertains to this matter. He added that there are federal laws that govern public access facilities in the United States and they are not based on equal time but are based on equal access. Referring to the political ad that was aired on public access television Channel 14 in 2001 for Jack Torvick, he stated that none of his opponents were prevented from doing the same thing.

Ornstein stated that as the primary funder of BPTV, the City is not fully insulated if obscene or pornographic material is aired on a Bloomington public access channel. He stated that the best way to protect the City against any liability is under the existing proposal that would give the City the ability to provide guidelines and make the initial determination as to whether the programming meets federal, state, and local guidelines, subject to an appeals process that would be in place. He believes it is a legitimate concern for the City as to what the content of the programming is on the BPTV channel, just as it is on Channel 14, and that the City can't censor the programs or violate First Amendment rights.

At Harden's request, Touchi-Peters stated he would provide Council with a copy of the document that is posted on the public access television channel regarding political advertising and equal access versus equal time.

2. Section 4.3 (He inquired as to whether a show he independently produced in October 2002, in which Vern Wilcox was interviewed and of which he owns the copyright, would require equal time for another candidate. He inquired who would make the determination of what is considered an infomercial and what isn't.)

Harden responded that his show was more of a news broadcast or a public forum interviewing of a candidate, which is different from a candidate producing his own ad, like in the case of Jack Torvick. Therefore, a disclaimer is needed for any political ads.

Council requested additional information regarding the liability issue relating to the City's operation of public access television and what exposure the City would be subject to if it approves proposed Option B.

Touchi-Peters stated that the usage of public access facilities has dropped in other cities that have taken over the operation of public access television. He stated there are only six vibrantly active public access facilities in the Twin Cities region - Minneapolis, St. Paul, Brooklyn Park, Roseville, White Bear Lake, and Bloomington and all are self-standing, non-profit organizations. He referenced the four alternatives being proposed by the BPTV Board:

1. If BPTV produced the City's shows, it would result in a potential cost savings of \$24,534.
2. BPTV has an internal goal of fund-raising enough money to get the City's contribution to BPTV down to 50% of their total budget.
3. Not necessary to replace BPTV equipment older than five years, as the City proposes, which would result in a cost savings estimate for 2003 of \$87,000.
4. That a citizen advisory body be required to be involved in the process.

Touchi-Peters stated that the government shouldn't be in the business of public access television and that this change would only make government larger.

Speaker #2: Terri Huml, Chairman of BPTV Board of Directors

She commended the City staff on its presentation tonight but stated that it was short notice for the Board to respond to the City's proposal. She asked City staff and the City Council to consider the following:

1. Cutting their funding and allowing BPTV to operate as it currently is by raising private donations which would allow them to operate the station.
2. As BPTV already produces in excess of 35 hours of programming each month compared to the City's producing 3.5 hours, to allow BPTV to assume production of Channel 14 for the City.

Regarding the City's plan to design and monitor the Guidelines, Huml requested the City take a broader view of that. She offered the BPTV Board's assistance to City staff in any future discussions or proposals. She stated that BPTV has volunteered its time and equipment to help assist others in the production of a show and inquired if the City would provide the same level of service.

Study Item #4
continued

Winstead requested that staff respond to the Council regarding the opportunity for providing production assistance in remote locations, etc. He added that the Communications Budget has been delayed and that it needs to be approved and that staff has been looking for ways to cut spending and this proposal has been put forth. He explained that this is a study session for Council to discuss the proposal set forth by staff and that additional public feedback would be desired by Council before they make a final decision on the budget. He also stated that he would request staff review the alternatives put forward by BPTV and provide Council with their rationale for either supporting them or not. He stated that BPTV would be noticed as to when the Council is going to consider the budget and proposal for approval and will receive copies of the proposal to comment on during a public meeting. Council requested that Huml provide staff with the amount of volunteer time the BPTV staff puts in.

Harden requested that Huml pass along her request that BPTV supporters have some flexibility in their position, rather than it being BPTV or nothing.

Speaker #3: David Benson, 7201 Lakeview Drive
He inquired when the Council would be voting on this matter.

Winstead replied that it would come back to Council as a public hearing at the Regular Council meeting on February 18, 2003.

Benson proceeded to state that he and others do not approve of the government taking control in operating Bloomington public television and that the City can't run it as well or as efficiently as it is today. He stated that many residents in Bloomington appreciate BPTV as it is today. He appreciated the opportunity for a public hearing on the matter and suggested that an article in the Bloomington Sun Current notifying the public of the upcoming hearing would be helpful. He inquired how the City could justify taking control of a public access television station with regard to the interpretation of a separation of church and state. He doesn't believe the City has demonstrated that the outcome of the City's proposal will produce the results it is claiming. In particular, he stated that more information is needed regarding the satisfaction level of the public in cities where the government has taken over public access television. He believes the burden of proof is on the City to demonstrate that government taking over public access television has been successful in other communities. He stated that the City hasn't provided details regarding the proposed \$100,000 savings nor provided an opportunity for inspection of the detail nor to comment on the proposed savings. He questioned the validity of an outside board and inquired as to what powers it would have.

Winstead concluded by stating that the matter would be advertised as a public hearing on the Communications Budget at the February 18, 2003, Regular City Council meeting, at which time the Council could decide to close the public hearing, vote on the budget, or continue the public hearing to a later date for additional input.

An unknown person in the audience inquired as to how much the City collects in franchise fees and how that money is divided up.

Winstead replied that in 2002, staff stated it was \$712,000 and that there were contributions made to the following entities: Bloomington Public Television, Bloomington Education Channel, Channel 14, and some to the City's General Fund.

Adjourn Meeting

Mayor Winstead adjourned the meeting at 10:45 p.m.

Barbara Clawson
Council Secretary