

CITY OF BLOOMINGTON
1800 WEST OLD SHAKOPEE ROAD
HENNEPIN COUNTY, MINNESOTA 55431

CITY COUNCIL MEETING

Approved Minutes
Study Meeting
Meeting #23

7:00 p.m.
June 28, 2004
Haeg Conf. Rm.

Call to Order Mayor Gene Winstead called the meeting to order at 7:07 p.m.

Roll Call Present: Mayor Winstead, Councilmembers D. Abrams, S. Elkins, A. Grady, H. Harden, S. Peterson, and V. Wilcox (arr. at 7:20 p.m.).

Public Comment Period The Public Comment Period is not usually open during study meetings.

Ratified Labor Agreement for Civilian Police Dispatchers Item 3.1 Motion was made by Peterson, seconded by Grady, and all voting aye, to ratify a three-year labor agreement with the International Association of Fire Fighters (IAFF) representing approximately 13 Civilian Police Dispatchers (Local 4115) in Bloomington for the years 2004, 2005 and 2006.

Winstead explained that this agreement parallels the other labor agreements within the City as well as the benefits that are available to non-represented employees.

Study Item #1 Brookside Storm Sewer System Feasibility Study Motion was made by Peterson, seconded by Elkins, and all voting aye, to direct staff to meet with the neighbors in the affected area to explain the new findings submitted to the City by Braun Intertec, Barr Engineering, and Wenck and Associates and to place this item on a future agenda for formal Council action.

Scott Anderson, Senior Civil Engineer explained that on April 19, 2004, the City Council directed staff to look further into the following: groundwater table level, review of staff's Feasibility Study, and the initial computer modeling. He defined the boundaries of the Brookside area and stated that the problem is more specifically located between Brookside Avenue and Upton Road from approximately West 101st Street to West 100th Street. He stated that this problem area has experienced flooding issues ranging from wet basements, saturated yards and standing water for some time, and it was the increase or continuance of those calls that prompted the Feasibility Study. Additional modeling by Barr Engineering concluded that predominantly the drainage and wet basement complaints generated in this area are due almost exclusively to the soils and the lot specific landscaping. Soil borings in the area discovered 5-6 feet of wet heavy clay on top of another 5-10 feet of saturated and not very well graded sand. During a month of gauging the water table level, which coincided with the late May/early June rains, the water level fluctuated approximately one foot. However, it remains approximately 10 feet below the surface elevation of the low area. He reviewed the proposed alternatives that address different issues – wet basements and storm sewer capacity and the alternatives that involve no infrastructure modifications. He described the alternatives that resulted from the additional study of the problems in the area and the comments made by residents after meeting with staff.

Based on the geotechnical evaluation by Braun Intertec and reviewed by Barr Engineering, Anderson explained that the primary factors influencing drainage concerns (primarily wet basements and occasional structural damage) in this area are soil type and the direct landscaping around the homes. In addition, he reported that the topography and the existing storm sewer system capacity do influence the periodic temporary ponding in the backyards. Staff recommends that a limited drain tile system be installed in the immediate backyard areas of those lowest homes in addition to modifying the landscaping that currently exists to try to promote more rapid transmission of surface water into the system. Funding for this work would be entirely from the Storm Sewer Utility Fund. Staff would work with homeowners in the area to advise or to review any steps they could take to improve local drainage around their homes as outlined in the review by Barr Engineering. He explained the purpose of the flap gate.

Study Item #1
continued

Peterson inquired if there were any other locations in Bloomington where homes had a 10% chance of flooding in any one year.

Anderson stated that the Brookside area is not unique to the city in having backyards being located in lower areas where ponding occurs. He believes the wet basement issues could be addressed locally at each home by the homeowner specifically addressing their individual landscaping situation.

As this latest information has not yet been shared with the neighbors, Council directed staff to schedule an informational meeting with the neighbors to present the results and that Council action would be taken at a future Council meeting.

Study Item #2
Advisory Board of
Health Smoke-Free
Workplace Study

Motion was made by Peterson, seconded by Elkins, to direct staff to proceed with the advertisement of a proposed smoking ban ordinance (Alternate B, which prohibits smoking in public places including bars, eating places, other places of work and entrances to places of work and public places), as edited by Council (adding the exception for hotel/motel rooms and keeping the outdoor bar and restaurant non-smoking area as it was delivered in the ordinance), and to conduct an administrative hearing on July 12, and a public hearing at the July 19 City Council meeting. Motion passed 4-3 (Winstead, Harden and Wilcox opposing).

Karen Zeleznak, City's Public Health Administrator explained the materials that were provided to Council on this item. She introduced Dr. Joe Yenkosky, Chair of the Advisory Board of Health (ABH) who presented the findings and recommendations as a result of their study "Smoke-free Workplaces/Restaurants and Bars."

Dr. Yenkosky's presentation included the following information:

1. Background relating to his position on the ABH.
2. Goals of the study performed by the ABH at the request of the City Council.
3. Comments on the scientific data on direct smoke and secondhand smoke.
4. Stakeholders interviewed.
5. Feedback from other cities that have pursued this issue.
6. Review of the Minnesota Clean Indoor Air Act.
7. Review of key issues: insignificant economic impact on restaurants and bars and separate ventilation systems do not offer a scientifically founded compromise.
8. ABH's recommendation that the Council adopt a smoking ban in the workplace with an exception for hotel/motel rooms, which can designate smoking rooms as a result of their being ventilated to the outside.

When asked about why the ABH recommended no smoking in the outdoor areas of restaurants, Yenkosky stated that although it's hard to accurately measure how much secondhand smoke people would be exposed to in that situation, employees and patrons would still be exposed to secondhand smoke at low levels.

Regarding what other outdoor workplace areas should be smoke-free, Yenkosky stated that the ABH wrestled with places like construction sites and although it is somewhat of a gray area, the Board still recommends smoking be banned in all workplaces. He stated that in regard to these types of places, it was rationalized that no one should infringe their bad behavior on others and that's why smoking in one's own personal vehicle would be allowed, as it can be done without hurting someone else. The recommendation of the ABH is to ban smoking in all workplaces except hotel/motel rooms. He stated that a workplace is defined as any place where two or more people come together to work.

Winstead stated that the goal of a smoking ban should be simple, reasonable, and all encompassing but that this recommendation is actually carving out many exceptions unintentionally. He inquired about the situation of two employees driving in a truck through Bloomington. It was stated that it would be considered a workplace but that enforcement in that situation would be difficult. It was clarified that in the ordinance drafted by the City Attorney, the smoking ban would not apply to motor vehicles.

Yenkosky stated that smoking would be allowed in private vehicles but the ABH saw company trucks as workplaces.

Wilcox disagreed with the hotel/motel logic. He stated that the cheaper motel rooms have ventilation to the outside but the high-rise hotel-type rooms don't ventilate to the outside. He disagrees with allowing an exception for hotels/motels due to their having separate ventilation systems for each room when no exception is being given for restaurants/bars that might be able to provide the same type of separate ventilation system.

Yenkosky explained that the risk would still be there for employees being exposed to secondhand smoke while providing service in that special room of a restaurant where the guest is not likely to be present and smoking when employees are actually cleaning the room. He stated that many workers don't realize the danger they are putting themselves in when working in a smoking area and shouldn't be put in a situation where they are uncomfortable discussing the situation with their employer. He explained that the logic used in excepting hotel/motel rooms from the ban is because they are considered private residences that are being leased for a particular period of time and are ventilated to the outside where others are not being exposed. He described the differences between clinical significance and statistical significance with regard to the scientific data that was collected.

Abrams thanked Yenkosky and the Advisory Board of Health for taking on the challenge from the City Council and doing it in a very thorough, thoughtful, detailed and analytical way. He requested that the City inform surrounding cities and counties that the Bloomington ABH's study is available as a resource on the City's website for those looking to study this issue. He commented that the ordinance drafted by the City Attorney is a short, simple, concise, easy to understand, well-organized ordinance. He stated he's comfortable with the hotel/motel exception but would consider it not being an exception if other Council members felt the same.

Grady stated that she supports Alternative B of the two ordinances being considered and that with regard to absurd situations doesn't believe the ban should apply to home offices since they are in private residences and the same with regard to private vehicles. She stated that hotel/motel rooms were not addressed in the draft ordinance but should be added as an exception, and that an effective date would need to be determined and inserted into the ordinance also. She stated a construction site should not be included, as it is not defined in Place of Work. She stated that Alternative B appears to be realistic and addresses the issues the Advisory Board of Health discovered in its research.

Elkins concurred with Grady and Abrams.

Mark Bernhardson, City Manager informed Council that they don't have to choose one or the other alternative but could publish both alternatives and that the Council may want to wait and see what Minneapolis and St. Paul end up doing first.

Winstead explained that as a part owner of a restaurant/bar in another city, he believes the proposed ordinances, premised on a health issue, are not all inclusive and therefore almost create regulatory impunities on a specific business segment due to the exceptions that are being carved out for certain businesses. He inquired as to the definition of "public places."

Dave Ornstein, City Attorney explained that the definition of public place includes places of work but also indoor areas such as auditoriums, arenas, meeting rooms, and common areas of rental apartment buildings and that it is taken from the Minnesota Clean Indoor Air Act.

Abrams suggested that for clarification purposes, the language in Draft Ordinance B under the definition of Public Place be edited to move "educational facilities other than public schools" to the end of the list, as places where smoking would be prohibited.

Elkins stated that most employers in Bloomington already ban smoking from their workplace but that bars and restaurants are workplaces where employees are still least protected.

Bernhardson explained that the Alternative B ordinance essentially gets rid of the exceptions in the Minnesota Clean Indoor Air Act other than private residences, multiple residential units, and hotel/motel rooms. He stated that including outside areas takes the Act a step further. He stated the desire is to have a general direction by the Council on what they would like to see published in the form of an ordinance but that it can be narrowed down during the public hearing.

Abrams suggested adding an exception for hotel/motel rooms, adding any other states that have adopted smoking bans to the list provided in the ordinance, and making the effective date September 1, 2004.

Regarding penalties, Ornstein stated that although the proposed penalty for a smoking ban violation, which is the same as in the Minnesota Clean Indoor Air Act, is a petty misdemeanor, it could be raised to a misdemeanor upon multiple violations within a year if desired by the Council. He stated that another option for businesses that are licensed would be to take action on their license if they violate an ordinance that is passed. He explained that petty misdemeanors under the law are not considered crimes and carry a maximum fine of \$300.00.

Grady inquired that more clarification may be needed with regard to the section of the ordinance pertaining to responsibilities of proprietors so that it is clear whether the penalty applies to the smoker or the proprietor.

Council agreed that language that would require the proprietor to take a more proactive approach in dealing with smoking violators should be added. It was determined that a definition of a hotel/motel be included as a place of work.

With regard to allowing a smoking area in a portion of an outdoor restaurant eating area, Grady stated it would just become the new smoking section.

Winstead stated that taking action in a more global fashion with regard to what other cities might do would help dissuade the hospitality industry's fears and concerns regarding an economic impact.

Elkins stated that in everything he has read about those places that have already passed smoking bans, there is no evidence to indicate that there has been any negative impact on restaurants and restaurants with bars. He doesn't see a risk to the type of dining establishments that are located in Bloomington as a result of a smoking ban.

Abrams agreed with Elkins. He stated the Council should decide what is the right public policy for people who live and work in Bloomington and adopt an ordinance accordingly.

A motion was made by Peterson, seconded by Elkins, to select Alternative B and direct staff to conduct an administrative hearing on that ordinance on July 12 and schedule it for a Council public hearing on July 19 and that the City Attorney incorporate the general items discussed by Council into the ordinance and keep the provision allowing smoking in designated hotel/motel rooms and the outdoor bar/restaurant non-smoking area as delivered in the proposed ordinance. The motion passed 4-3 (Winstead, Harden and Wilcox opposing).

Study Item #2
continued

Winstead stated that he could not support the motion, as there are things he believes should be added/deleted, etc.

Wilcox stated that he could not support the motion, as this hasn't gone through the public hearing process yet and that there are a number of businesses in Bloomington that have not had a chance to present their case on this issue. He believes Bloomington businesses will be economically impacted by such an ordinance, in particular the gambling operations that fund a lot of the little league sports facilities if Bloomington gets out in the lead on this issue. He would like more public input prior to the formation of an actual ordinance Council would be considering.

Peterson stated that he would be open to changing the ordinance after the public hearings if Council determines it's the appropriate thing to do. He believes this is the start of a process and that it is not a foregone conclusion on the part of the Council to advertise an ordinance they are considering adopting to which the public will provide feedback.

It was stated that an ordinance will be published in the Sun Current and that all of the different organizations that will want to give input on this issue will be notified of the administrative hearing scheduled for July 12. It was stated that anyone wishing to comment on this issue would be able to do so at both the administrative hearing and the Council meeting but could also send e-mails, write letters, or make phone calls to the City Council.

Abrams inquired about the process involving Phase 2 of the administrative study group. He indicated a desire to give the Parks, Arts and Recreation Advisory Commission an opportunity to review the issue regarding Phase 2 prior to the Council taking its action.

It was suggested that the public continue to refer to the City's website to stay updated on the process that will be used at the July 12 administrative hearing and the July 19 Council meeting. A press release informing the public of the next steps will be provided to all of the surrounding newspapers.

Winstead thanked the Health Division and the Advisory Board of Health for all of its hard work in studying this issue and providing the report, per the direction of the City Council.

Zeleznaк thanked staff for the support the Health Division received from the City Attorney's Office, Licensing, and Information Systems in putting the package of information together for the Council.

Study Item #3
Strategic Priorities

Council concurred with the preliminary direction of the Strategic Priorities ranking as compiled by the City Manager and continued the item to the July 26 study meeting for further discussion.

Bernhardson explained that the money in Category A down through Traffic Calming on the Strategic Priorities Preliminary Ranking Sheet has been transferred. After a short discussion, Council concurred with the initial direction of the rankings but continued the item for further discussion at their July 26 study meeting.

Study Item #4
Arts and Memorials
Dedication Guidelines

As Council did not receive the Guidelines prior to this meeting, the item was postponed to the July 26 Council study meeting. Upon receipt of the information, Council was requested to provide the City Manager with their feedback by July 6.

Harden expressed concern that the plantings around the pond at Civic Plaza get planted this year so that the City can be in compliance with its own pond ordinance and to help deflect geese. She inquired if funds were available to do it yet this summer.

Bernhardson stated that staff had hoped to bring down the water level in the pond so that a better seal could have been installed, and then bring it back up. Since some of the plantings are aquatic plants, he stated that it might not be wise to plant them and then have the water level lowered. Staff will continue to work on the seal problem and the funding for the plantings will be reviewed to see if the perimeter plantings could be done yet this year.

Study Item #5
Streetscape

Council postponed the 98th Street assessment indefinitely for re-advertising at a future Council meeting and continued the streetscape maintenance policy options for all areas of the city to the July 26 study meeting.

Bernhardson informed Council that the maintenance level of the streetscape at 98th Street & Lyndale Avenue has been brought up to what it was 5-6 years ago and that the plantings will proceed in the fall. Regarding the policy options for streetscape maintenance around the city, he requested the Council review the Streetscape Program information and return the Streetscape Maintenance Policy Options to him by July 6 for discussion at the July 26 study meeting. The 98th Street Streetscape assessment specifically was postponed indefinitely for re-advertising at a future Council meeting.

Study Item #6
Five-Year Capital
Improvement Program

Staff reviewed the draft document with Council and gained their input on suggested changes to be incorporated into the final document.

Lori Economy-Scholler, Chief Financial Officer reviewed the Draft Combined 5-Year Capital Improvement Program book for the years 2004-2008. She explained that it is the City's policy to coordinate the development of the capital improvement budget with the operating pieces of the developments to ensure that they stay within their allotted budgets. The program book contains the input initially provided to Finance by the various City departments which they will later review. She explained the contents of the book indicating that the Capital Plan on page 10 summarizes the listing of all the projects planned along with their associated costs. Projects are later detailed with a listing of the corresponding funding sources.

Peterson liked the format but suggested that it would be useful to show on some of the summarization pages whether the project is new or the first year that the project appeared in the plan, etc. In addition, he suggested that within the funding sources information, it be indicated whether the funding (grant money) is a "sure thing" or just "anticipated."

Abrams inquired as to why the proposed funding for the intersection at 90th Street & Nicollet Avenue, labeled as the most accident prone intersection in the city according to the recent traffic accident data, is not programmed for public safety and traffic control improvements until the year 2008. He suggested that it be done sooner.

Staff will check to see where this intersection is listed on Hennepin County's schedule to see if it can be moved up on their priority list.

Peterson also suggested that it would be beneficial for the Council to have a distribution of the priorities and indicate whether or not Council approved a particular project.

Council was requested to provide staff with any additional feedback on the book.

Potential Future Topics
for Council Discussion

1. Animal Shelters
(Council indicated an interest to pursue this discussion after additional information is provided to them regarding what animals the City currently allows in homes, the quantities, and what other communities regulate.)
2. LCMR Funds for Old Cedar Bridge Replacement (Long Meadow Bridge)
(Although it's a popular spot for birders, the bridge doesn't make a connection to Burnsville or Eagan just to the Old River Road and, therefore, Council decided not to pursue funding for it. It was stated that it will cost Bloomington \$1 million alone just to tear it down and another \$3 million if it desires to build a new one. Because most of the bikers wanting the bridge are commuting from other cities such as Burnsville and Eagan and points south, Council suggested that the funding should come from other sources.)

Potential Future Topics
continued

3. NLC/FAIR Report
Harden, a member of the National League of Cities' (NLC) FAIR Committee (Finance Administration Intergovernmental Relations) studying taxation issues, reported on the Super Summit meeting she attended in Chicago, IL. Highlights from her report included:
 - a) Each council district in Chicago gets a portion of the Capital Improvement Project money to spend on a project within their district.
 - b) NLC is concerned with the future of public finance and the following topics were tackled at the Summit: A streamlined sales tax project, broken intergovernmental relationships, a disconnect between revenues and today's economy, decreasing sales tax revenues due to the economy swinging more to the sale of services rather than hard goods, how the lack of trust for government is affecting the arena of public finance, a possible bill that would free businesses from collecting sales tax if they don't have a physical presence in that state, NLC's position against TABOR due to its drastic impact on cities, issue of increasing number of non-profit organizations being exempt from property taxes, and the resolution FAIR adopted that recommended to the NLC Board that Congress and the Administration approve no more tax cuts until the federal government has funded all of its mandates to localities.
4. Elkins inquired if the Council should think about having a future discussion on how to deal with the zoning relating to swing sets, basketball hoops, etc., as when these matters come up, they sometimes cause problems within neighborhoods.

Bernhardson suggested that many times these types of issues tend to be isolated cases and that it would better for Council to wait and look at the zoning at such time as when there are 3-4 cases regarding a particular issue to deal with, as many times the real issue is just a dispute between a couple of neighbors.

Abrams mentioned that perhaps the Council should take some time in the future to review the Code to see if it makes sense to trim some of the zoning ordinances that make what appear to be routine and fairly harmless actions illegal resulting in a Zoning Code that actually prohibits the kinds of things the Council really doesn't want to see in Bloomington.

Adjourn Meeting

Mayor Winstead adjourned the meeting at 10:25 p.m.

Barbara Clawson
Council Secretary