

**COUNCIL PROCEEDINGS
PUBLISHED BY THE AUTHORITY OF THE CITY COUNCIL
OF BLOOMINGTON, ILLINOIS**

The Council convened in regular Session in the Council Chambers, City Hall Building, at 7:30 p.m., Monday, July 27, 2009.

The Meeting was opened by Pledging Allegiance to the Flag followed by Silent Prayer.

The Meeting was called to order by the Mayor who directed the City Clerk to call the roll and the following members answered present:

Aldermen: Judy Stearns, Kevin Huette, Bernie Anderson, David Sage, John Hanson, Jennifer McDade, Steven Purcell, Karen Schmidt, Jim Fruin and Mayor Stephen F. Stockton.

City Manager David Hales, City Clerk Tracey Covert, and Corporate Counsel Todd Greenburg were also present.

The following was presented:

Historic Preservation Commission – Heritage Awards.

Carson Durham, Historic Preservation Commission (HPC) Chair, addressed the Council. He recognized the hard work and community assets of the recipients. The awards were presented bi-annually. The first (1st) award went to 801 E. Grove Street. The house had been used for a number of uses. It had been restored and maintained the architectural character. The second (2nd) award went to 519 Kreitzer. No one was present to accept this award. The third (3rd) award was given to 411 N. Center St. This house had lived many lives. It had been restored and reinterpreted. It had a strong presence. Mr. Durham also presented the Preservationist of the Year Award to Ken Emmons, City Planner. He acknowledged Mr. Emmons leadership, commitment, and love for the City. Mr. Emmons addressed the Council. He had been the City Planner for thirty-eight (38) years. He expressed his appreciation to the City and Council for the opportunity to work with the HPC.

Mayor Stockton thanked the HPC for their work. He also thanked the award recipients for their hard work, preserving, setting a good example for the community, and protecting older parts of the City. The Council was trying to address various City service programs. He wanted to encourage those programs that pay attention to the City's older sections. All needed to work together to protect the community.

The following was presented:

SUBJECT: Council Proceedings of August 14, 2006, and Work Session Minutes and Executive Session Minutes of April 13, 2009

RECOMMENDATION: That the reading of the minutes of the previous Council Proceedings of August 14, 2006 and the Work Session and Executive Session Minutes of April 13, 2009 be dispensed with and the minutes approved as printed.

BACKGROUND: The Council Proceedings of August 14, 2006, and the Work Session and Executive Session Minutes of April 13, 2009 have been reviewed and certified as correct and complete by the City Clerk.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: Not applicable.

Respectfully submitted for Council consideration.

Prepared by:

Recommended by:

Tracey Covert
City Clerk

David A. Hales
City Manager

Motion by Alderman Purcell, seconded by Alderman Schmidt that the reading of the minutes of the previous Council Meeting of August 14, 2006 and Work Session Minutes and Executive Session Minutes of April 13, 2009 be dispensed with and the minutes approved as printed.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Huette, Schmidt, McDade, Anderson, Hanson, Sage, Fruin and Purcell.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Bills and Payroll

RECOMMENDATION: That the bills and payroll be allowed and orders drawn on the Treasurer for the various amounts as funds are available.

BACKGROUND: The list of bills and payrolls will be furnished to you in on Friday, July 24, 2009 by posting via the City's web site. After examination, I will notify the Council of any items which may need to be addressed.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: Not applicable.

Respectfully submitted for Council consideration.

Prepared by:

Recommended by:

Barbara J. Adkins
Deputy City Manager

David A. Hales
City Manager

Motion by Alderman Purcell, seconded by Alderman Schmidt that the bills and payroll be allowed and orders drawn on the Treasurer for the various amounts as funds are available.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Huette, Schmidt, McDade, Anderson, Hanson, Sage, Fruin and Purcell.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Payments from Various Municipal Departments

RECOMMENDATION: That the payments be approved.

BACKGROUND: All of the described payments are for planned and budgeted contracts previously approved by the City Council.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: As follows:

1. The second partial payment to the Pantagraph in the amount of \$3,151.88 on a contract amount of \$46,580.16 of which \$6,255.76 will have been paid to date for work certified as 13% complete for the 2009-2010 Seasonal Advertising Services. Completion date – April 2010.
2. The thirty-fourth partial payment to Clark Dietz, Inc. in the amount of \$7,613.64 on a design contract amount of \$392,895 of which \$368,307.88 will have been paid to date for work certified as 94% complete for the Hamilton Road – Timberlake to Main St. f/k/a Hamilton to Main St. Completion date – September 2009.
3. The twentieth partial payment to Rowe Construction Co. in the amount of \$127,125.25 on a construction contract amount of \$3,015,147.77 of which \$3,015,147.77 will have been paid to date for work certified as 99% complete for the Mitsubishi Motorway – Six Points to Sugar Creek. Completion date – October 2008.
4. The eighth partial payment to Rowe Construction Co. in the amount of \$345,944.55 on a construction contract amount of \$3,476,726.41 of which \$1,750,634.64 will have been paid to date for work certified as 50% complete for the Lincoln Street – Bunn to Morrissey (MFT 92-00283-00-RP). Completion date – October 2009.
5. The nineteenth partial payment to Clark Dietz, Inc. in the amount of \$11,221.95 on a design contract amount of \$305,000 of which \$203,148.99 will have been paid to date for work certified as 67% complete for the Locust/Colton Street Sewer Separation & Water Main Replacement Design (CSO Elimination Phase I). Completion date – March 2010.

Respectfully submitted for Council consideration.

Prepared by:

Recommended by:

Tracey Covert
City Clerk

David A. Hales
City Manager

Motion by Alderman Purcell, seconded by Alderman Schmidt that the payments be approved.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Huette, Schmidt, McDade, Anderson, Hanson, Sage, Fruin and Purcell.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Audit of the Accounts for the Township Supervisor of General Assistance Fund and General Town Fund for the Month of June, 2009

RECOMMENDATION: That the audit of the bills and payrolls for the Township for the month of June, 2009 be made a matter of record.

BACKGROUND: Audit of the Accounts for the Township Supervisor of General Assistance Fund and General Town Fund for the month of June, 2009 were presented for Audit by the Township Supervisor.

The Audit of these accounts took place on Monday, July 27, 2009 at 6:30 p.m. in the Conference Room of Bloomington City Hall and should, at this time, be made a matter of record.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: Not applicable.

Respectfully submitted for Council consideration.

Prepared by:

Recommended by:

Tracey Covert
City Clerk

David A. Hales
City Manager

Motion by Alderman Purcell, seconded by Alderman Schmidt that the audit of the bills and payroll be made a matter of record.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Huette, Schmidt, McDade, Anderson, Hanson, Sage, Fruin and Purcell.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Report

RECOMMENDATION: That the report be received and placed on file.

BACKGROUND: The following reports should be received and placed on file with the City Clerk:

1. Monthly Receipt & Expenditure Report, June 2009.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: Not applicable.

Respectfully submitted for Council consideration.

Prepared by:

Recommended by:

Tracey Covert
City Clerk

David A. Hales
City Manager

Motion by Alderman Purcell, seconded by Alderman Schmidt that the report be placed on file and made a matter of record.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Huette, Schmidt, McDade, Anderson, Hanson, Sage, Fruin and Purcell.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Payment of an Invoice for \$12,620 from McLean County Asphalt for Repairs to the Pavement at the Intersection of Washington and Oak Streets

RECOMMENDATION: That the payment be approved.

BACKGROUND: On May 25, 2009 (Memorial Day), an eight inch (8") hydrant lead (the water line providing water to the hydrant) failed at the intersection of Washington and Oak Streets. The hydrant lead had failed and a large portion of the water pipe disintegrated at one time due to corrosion.

The least common occurrence is the type of pipe failure which occurred with this break. A large portion of pipe failed at once. This pipe failure resulted in a large amount of water being released quickly and caused extensive damage to the pavement in the intersection. The repair to the pipe did account for some of the damage to the intersection since a trench needed to be dug

to replace a ten foot (10') piece of pipe. A trench was required to replace a piece of pipe. The majority of the pavement damage was caused by the large area of upheaval in the pavement as the water released under pressure.

The size of pavement repair was beyond the expertise and capabilities of the Public Works Department. After the fire hydrant lead was repaired, a paving contractor was called upon to make the necessary emergency repairs.

Staff respectfully recommends that the payment in the amount of \$12,620 to McLean County Asphalt for repairs to the pavement at the intersection of Washington and Oak Streets following a water main break be approved.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: Payment for this invoice will be charged to the Water Department, Operations and Management budget, Transmission and Distribution Division, Repair and Maintenance to Infrastructure, Account # 5010-50100-50120-70550.

Pavement repairs, both large and small, are budgeted in the Water Department budget each year. \$425,000 was budgeted in this account for FY 2009/10.

Respectfully submitted for Council consideration.

Prepared by:

Recommended by:

Craig M. Cummings
Director of Water

David A. Hales
City Manager

Motion by Alderman Purcell, seconded by Alderman Schmidt that the payment be approved.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Huette, Schmidt, McDade, Anderson, Hanson, Sage, Fruin and Purcell.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Analysis of Bids and Approval of Contract for Sidewalk Reconstruction

RECOMMENDATION: That bid for Sidewalk Replacement and Handicap Ramp Reconstruction be awarded to Felmley-Dickerson Co. in the amount of \$148,157.50, and the Mayor and City Clerk be authorized to execute the necessary documents.

BACKGROUND: This project includes two (2) budgeted projects; the 50/50 Residential Sidewalk Replacement Program, and the Americans with Disabilities Sidewalk Wheelchair Ramp Program. Four (4) bids were received and opened at 11:00 a.m. on July 13, 2009 in the City Council Chambers. The bids were as follows:

	As Read	As Corrected
Felmley-Dickerson Co., Bloomington, IL Low Bid	\$148,033.00	\$148,157.50
J.G. Stewart, Inc., Bloomington, IL	\$151,746.00	
Stark Excavating, Inc., Bloomington, IL	\$243,375.00	
Rowe Construction Co., Bloomington, IL	\$314,325.14	\$314,340.14
Engineer's Estimate	\$161,737.50	
Budget:		
Residential Sidewalk Program	\$ 50,000	CIF
Residential Sidewalk Program	\$ 50,000	PRI PROP
Sidewalk Wheelchair Ramps	<u>\$ 60,000</u>	CIF
Total	\$160,000	

The project includes two (2) budgeted projects: 1.) the 50/50 Residential Sidewalk Replacement Program, and 2.) the Americans with Disabilities Sidewalk Wheelchair Ramp Program.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: The total dollars allocated for this project is \$160,000 and will be taken from the Capital Improvement Fund and Private Property (X40100-72560).

Respectfully submitted for Council consideration.

Prepared by:

Reviewed as to legal sufficiency:

Jim Karch
Director of Public Works

J. Todd Greenburg
Corporation Counsel

Recommended by:

David A. Hales
City Manager

(CONTRACT ON FILE IN CLERK'S OFFICE)

Alderman Stearns questioned the 50/50 program compared to last year. David Hales, City Manager, stated it was the same. He questioned requests. Jim Karch, Director of Public Works, addressed the Council. Requests were taken year round. Funds were available on a first come first serve. Funds had not been depleted yet.

Alderman Stearns questioned City sidewalks. Mr. Karch cited the pot hole program. Sidewalks with safety concerns would be addressed in the future.

Alderman Stearns questioned the existence of rules. Mr. Karch noted there were criteria. Mayor Stockton questioned the cost of \$148,000 and linear feet of sidewalk. Mr. Karch could not provide figures. He offered to provide the information in the future.

Alderman Stearns requested a unit price. Mr. Karch stated in the past the City had worked with low income households. The 50/50 program provided assistance. Mr. Hales added assistance was provided through Community Development Block Grant (CDBG) funding. Mayor Stockton cited dangerous sidewalks. Mr. Karch stated operations would look at same. They would investigate and determine if they needed to be replaced. Sidewalks were evaluated on a case by case basis.

Motion by Alderman Purcell, seconded by Alderman Schmidt that the bid for Sidewalk Replacement and Handicap Ramp Reconstruction be awarded to Felmley-Dickerson Co. in the amount of \$148,157.50, and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Huette, Schmidt, McDade, Anderson, Hanson, Sage, Fruin and Purcell.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Analysis of Bids and Approval of Contract for Street and Alley Repair

RECOMMENDATION: That the bid for Street and Alley Repair be awarded McLean County Asphalt Company Inc. for Alternate C, the contract total be limited to \$250,000, and the Mayor and City Clerk be authorized to execute the necessary documents.

BACKGROUND: The Street and Alley Repair Program was traditionally included with the City's Annual Resurfacing Program. Given the large amount of street and alley repair to be performed this year, this portion of work was bid as a separate contract from the larger resurfacing program. Several alternates were bid in order to evaluate the most cost effective

solution. Two (2) bids were received and opened at 11:00 a.m. on July 13, 2009 in the City Council Chambers. The bids are as follows:

Company	Base Bid	Alt A Total	Alt B Total	Alt C Total	Alt D Total
McLean County Asphalt*	\$259,151.80	\$271,934.30	\$272,269.30	\$271,934.30	\$272,269.30
Rowe Construction	\$261,310.55	\$282,819.15	\$281,633.25	\$280,037.30	\$278,851.40
Engineers Estimate	\$277,600.00	\$314,280.00	\$313,275.00	\$319,405.00	\$318,400.00

*Low Bid

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: The total dollars allocated for this project is \$250,000 which will be paid from the Capital Improvement Fund (40100-72530) with a 2.6% interest loan that will be paid back to the Water Depreciation Fund over a five (5) year period. A contract with UCM/Rowe Construction for the General Resurfacing Program was approved at the June 22, 2009 Council meeting in the amount of \$746,708.79. This will bring the total amount borrowed from the Water Depreciation Fund to \$996,708.79.

Respectfully submitted for Council consideration.

Prepared by:

Reviewed as to legal sufficiency:

Jim Karch
Director of Public Works

J. Todd Greenburg
Corporation Counsel

Recommended by:

David A. Hales
City Manager

(CONTRACT ON FILE IN CLERK'S OFFICE)

Alderman Stearns expressed concern regarding this item. The City was abandoning the list of alleys. She was concerned that citizens have waited. David Hales, City Manager, addressed the Council. He stated there was a list of gravel/dirt alleys. 2009 had not been a typical year. There were two (2) alleys in significant need of paving. A limited amount of money would go toward those two (2) alleys. He wanted to see a paving program established in the future when resources were available. He stated the City would maintain the grade for the gravel/dirt alleys.

Alderman Stearns believed the White's Place alley had been used for refuse collection.

Alderman Schmidt stated the Council should not lose sight of the project. The alleys should be placed in a cue. She believed the citizens would understand. Mayor Stockton addressed the two (2) types of alleys: paved and unpaved. The alleys would not be forgotten.

Alderman Schmidt stated the list always exceeded revenues.

Alderman Stearns believed there were thirty (30) alleys on the list. Mr. Hales was trying to find the balance. He stated the list would be maintained. The City would keep the dirt/gravel alleys grade at a passable level.

Alderman Stearns was concerned about the list. She questioned the City's commitment to same. The Council needed to fulfill its commitments to citizens. Mayor Stockton noted that this list was dynamic.

Alderman Fruin stated alley service was limited in number due to street conditions and traffic counts.

Alderman McDade thanked staff for their stewardship.

Motion by Alderman Purcell, seconded by Alderman Schmidt that the bid for Street and Alley Repair be awarded to McLean County Asphalt Company Inc. for Alternate C, the contract total be limited to \$250,000, and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Huette, Schmidt, McDade, Anderson, Hanson, Sage, Fruin and Purcell.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Local Agency Agreement for Federal Participation and Motor Fuel Tax Resolution for the Resurfacing of Ireland Grove Road from Veterans Parkway to the Kickapoo Creek Bridge, (Ward 8)

RECOMMENDATION: That the Agreement be approved, the Mayor and City Clerk authorized to execute the necessary documents, and the Resolution adopted.

BACKGROUND: The proposed improvements include the repair and replacement of inlets and manholes, and resurfacing the road within the project limits. The project is currently scheduled

for a November, 2009 Illinois Department of Transportation (IDOT) letting. In order to utilize Federal Highway Administration (FHWA) funding, the City must adopt a Local Agency Agreement detailing the proposed funding amounts and participation levels.

Staff respectfully recommends that Council approve the Local Agency Agreement for Federal Participation between the City and IDOT. Staff also recommends Council approve a Resolution appropriating \$76,100 in Motor Fuel Tax Funds (MFT) (X20300-72530).

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: The estimated project costs are as follows:

FHWA	\$420,000
City of Bloomington (Motor Fuel Tax Funds)	<u>\$ 76,100*</u>
TOTAL	\$496,100

*Since the project is scheduled for the November 2009 letting, sufficient MFT funds will be available to pay the City's share.

Respectfully submitted for Council consideration.

Prepared by:

Reviewed as to legal sufficiency:

Jim Karch
Director of Public Works

J. Todd Greenburg
Corporation Counsel

Recommended by:

David A. Hales
City Manager

(CONTRACT AND RESOLUTION ON FILE IN CLERK'S OFFICE)

Motion by Alderman Purcell, seconded by Alderman Schmidt that the Local Agency Agreement for Federal Participation for the Resurfacing of Ireland Grove Road from Veterans Parkway to the Kickapoo Creek Bridge be approved, the Mayor and City Clerk be authorized to execute the necessary documents, and the Resolution adopted.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Huette, Schmidt, McDade, Anderson, Hanson, Sage, Fruin and Purcell.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Local Agency Agreement for Federal Participation for the Installation of Traffic Signals at the Intersection of Hershey Road and College Avenue, (Ward 3)

RECOMMENDATION: That the Agreement be approved, the Mayor and City Clerk be authorized to execute the necessary documents.

BACKGROUND: The proposed improvements include installation of traffic signals and a detector loop system within the project limits. The project is currently scheduled for a November 2009, Illinois Department of Transportation (IDOT) letting. In order to utilize Federal Highway Administration (FHWA) funding, the City must adopt a Local Agency Agreement detailing the proposed funding amounts and participation levels. A Motor Fuel Tax (MFT) Resolution for the City's portion of the project was previously approved by Council on January 8, 2007. This Resolution is still valid. The City may spend up to the amount listed. Any amounts not expended will be returned to the City's MFT fund balance.

Staff respectfully recommends that Council approve the Local Agency Agreement for Federal Participation between the City and IDOT, and the Mayor and City Clerk be authorized to execute the necessary documents.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: The estimated project costs are as follows:

FHWA	\$200,000
City of Bloomington (MFT Funds)	<u>\$ 21,000*</u>
TOTAL	\$221,000

*Since the project is scheduled for the November 2009 letting, sufficient MFT funds will be available to pay the City's share.

Respectfully submitted for Council consideration.

Prepared by:

Reviewed as to legal sufficiency:

Jim Karch
Director of Public Works

J. Todd Greenburg
Corporation Counsel

Recommended by:

David A. Hales
City Manager

(CONTRACT ON FILE IN CLERK'S OFFICE)

Alderman Fruin questioned the City's cost for the traffic signals. Jim Karch, Director of Public Works, addressed the Council. The Town of Normal was not participating. This traffic signal would be added to the Master Agreement. The City would provide maintenance services to the Town. David Hales, City Manager, noted a Constitution Trail project. The Town and McLean County would cover the costs.

Alderman Sage questioned the information being tracked. Mr. Karch stated both roads would be maintained by the City. It had initially been the City's responsibility.

Motion by Alderman Purcell, seconded by Alderman Schmidt that the Local Agency Agreement for Federal Participation for the Installation of Traffic Signals at the Intersection of Hershey Road and College Avenue be approved and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Huette, Schmidt, McDade, Anderson, Hanson, Sage, Fruin and Purcell.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Local Agency Agreement for Federal Participation and Motor Fuel Tax Resolution for the Improvement of Hamilton Road from Timberlake Lane to Main Street (US 51), (Ward 1)

RECOMMENDATION: That the Agreement be approved, the Mayor and City Clerk be authorized to execute the necessary documents, and the Resolution adopted.

BACKGROUND: The proposed improvements will widen the current two (2) lane, rural cross-section, to a five (5) lane urban facility to match the section of roadway completed in 2007 from Greenwood Ave. to Timberlake. The project includes a new sixteen inch (16") water main and sanitary sewer along Hamilton Road. The project is currently scheduled for a November 6th,

2009 Illinois Department of Transportation (IDOT) bid letting, pending staff negotiations with property owners to acquire right of way and easements.

In order to utilize Federal Highway Administration (FHWA) and State of Illinois funding, the City must adopt a Local Agency Agreement detailing the proposed funding amounts and participation levels.

Staff respectfully recommends that Council approve the Local Agency Agreement for Federal Participation for the Improvement of Hamilton Road from Timberlake Lane to Main Street (US 51) between the City and IDOT. Staff also respectfully recommends that Council approve a Resolution appropriating \$450,528 in Motor Fuel Tax Funds (X20300-72530).

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: The estimated funding levels are as follows:

FHWA (ARU - American Relief & Recovery Act Funds)	\$ 834,472
FHWA	\$2,500,000
State of Illinois	\$ 372,000
City of Bloomington (Motor Fuel Tax Funds 20300-72530)	\$ 450,528
City of Bloomington (Water Depreciation Funds 50200-72530)	\$ 466,000
City of Bloomington (Sewer Depreciation Funds 52200-72530)	\$ 277,000
TOTAL	\$4,900,000

Respectfully submitted for Council consideration.

Prepared by:

Reviewed as to legal sufficiency:

Jim Karch
Director of Public Works

J. Todd Greenburg
Corporation Counsel

Recommended by:

David A. Hales
City Manager

(CONTRACT AND RESOLUTION ON FILE IN CLERK'S OFFICE)

Alderman Sage questioned if this item was Illinois Department of Transportation (IDOT) mandated. Jim Karch, Director of Public Works, stated there was minimal leeway. Metropolitan Planning Organization (MPO) money could have been lost. There would be a multi year impact. David Hales, City Manager, addressed the Council. Attempts to postpone this agreement had been unsuccessful.

Motion by Alderman Purcell, seconded by Alderman Schmidt that the Local Agency Agreement for Federal Participation for the Improvement of Hamilton Road from Timberlake Lane to Main Street (US 51) be approved, the Mayor and City Clerk be authorized to execute the necessary documents, and the Resolution adopted.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Huette, Schmidt, McDade, Anderson, Hanson, Sage, Fruin and Purcell.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Professional Services Contract for the Center for Performing Arts

RECOMMENDATION: That the contract with Art Fegan Entertainment, Inc. in the amount of \$12,000 be approved, and the Mayor and City Clerk be authorized to execute the necessary documents.

BACKGROUND: Staff respectfully requests approval of a contract to engage persons and/or groups represented by: Art Fegan Entertainment, Inc. to perform services in the Bloomington Center for the Performing Arts on dates agreed by staff. Base expenses for the contract will be \$12,000.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: The selection of these artists was coordinated with the Cultural Commission and the Cultural District's Programming Advisory Committee. Staff and community advisors agree that the visiting professionals would attract broad, positive community involvement and contribute to the public service mission of the Cultural District and the Bloomington Center for the Performing Arts.

FINANCIAL IMPACT: Funding for these contracts will come from account X21100-70220 of the Cultural District's 2009 budget, to be offset by future revenues.

Respectfully submitted for Council consideration.

Prepared by:

Reviewed as to legal sufficiency:

John Kennedy
Director of Parks, Recreation & Cultural Arts

J. Todd Greeburg
Corporation Counsel

Recommended by:

David A. Hales
City Manager

(CONTRACT ON FILE IN CLERK'S OFFICE)

Motion by Alderman Purcell, seconded by Alderman Schmidt that the contract with Art Fegan Entertainment, Inc. in the amount of \$12,000 be approved, and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Huette, Schmidt, McDade, Anderson, Hanson, Sage, Fruin and Purcell.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Resolution authorizing the Water Depreciation Fund (Number: 5020) to loan \$1 Million Dollars to the Capital Improvement Fund for the 2009-2010 General Resurfacing Program

RECOMMENDATION: That the Intra-fund Loan be approved and the Resolution be adopted.

BACKGROUND: Staff has been working with Craig Cummings, Director of Water, to borrow \$1 million dollars from the Water Depreciation Fund at 2.6% (simple interest) for up to five (5) years. Staff would deduct the City's payment from the General Fund on July 1st of each fiscal year, with the first payment due July 1, 2010. The reasons for considering this approach are as follows:

- This would eliminate the flotation costs incurred from the City borrowing or issuing bonds for the 2009-2010 Resurfacing Program. There would be a savings in flotation cost.
- The Water Enterprise Fund is guaranteed repayment from the City's General Fund on July 1, 2010; July 1, 2011; July 1, 2012; July 1, 2013 and the final repayment on July 1, 2014.

- The City, and thus the Water Fund, would realize the 2.6% interest on the loan rather than the credit market. The interest rate is based upon the five (5) year U.S. Treasury Note Yield.
- There would be a significant savings in time for the City Manager and Interim Finance Director to research bonding for this project and Request for Proposals (RFP) for the City to borrow \$1 million from a financial institution.

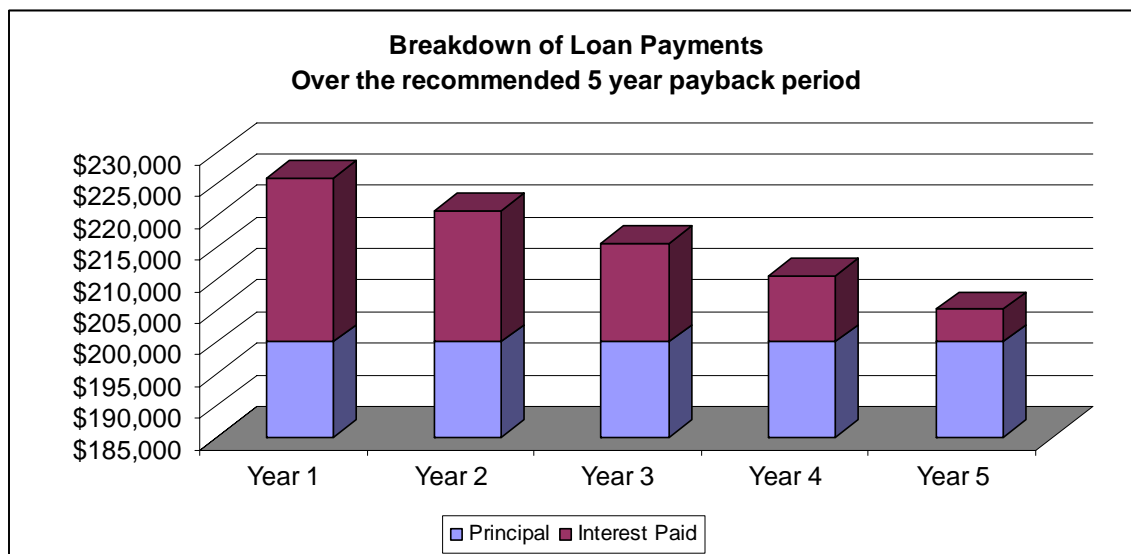
This concept has been reviewed by the City’s Corporation Counsel and has assured that there are no legal hurdles to overcome. Council simply needs to formalize this in a Resolution approving this arrangement. Staff has proposed the \$1 million at 2.6% to be repaid by approximately \$200,000 a year plus interest for a five (5) year scenario to the Director of Water.

Fortunately, the financial condition of the Water Depreciation Fund has a sufficient fund balance to loan funds to the Capital Improvement Fund. The Water Director has agreed to the proposal in principal and believes that this is a win-win situation for the City. The \$1 million loan is not anticipated to take away from any budgeted or future water capital projects or day to day operations of the Water Department.

Staff respectfully recommends that Council adopt a Resolution that authorizes the Water Depreciation Fund to loan the 2009-2010 Capital Improvement Fund (CIF) \$1 million Dollars for the 2009-2010 General Resurfacing Program. At the June 22, 2009 meeting, Council approved \$746,708.79 for General Resurfacing with the remainder to be spent on smaller pavement areas.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: The \$1 million plus interest would be repaid to the Water Depreciation Fund starting July 1, 2010 and over the next four (4) consecutive fiscal years at 2.6% interest.



Respectfully submitted for Council consideration.

Prepared by:

Reviewed by:

Reviewed by:

Barbara J. Adkins
Deputy City Manager

Tim Ervin
Financial Supervisor

Craig Cummings
Director of Water

Reviewed as to Legal Sufficiency:

Recommended by:

J. Todd Greenburg
Corporation Counsel

David A. Hales
City Manager

RESOLUTION 2009 - 38

A RESOLUTION AUTHORIZING A \$1,000,000 LOAN FROM THE WATER DEPRECIATION FUND TO THE CITY OF BLOOMINGTON'S CAPITAL IMPROVEMENT FUND FOR THE 2009-2010 GENERAL RESURFACING PROGRAM

WHEREAS, there is a need for the City of Bloomington to borrow funds for the 2009-2010 General Resurfacing Program;

WHEREAS, the City of Bloomington's Water Depreciation Fund has sufficient cash reserve to loan the City of Bloomington's Capital Improvement Fund \$1,000,000 for its 2009-2010 General Resurfacing Program;

WHEREAS, the City of Bloomington would pay the loan off in five years, starting July 1, 2010 and each consecutive July 1st through 2014 in the amount of \$200,000 per year plus interest; and

WHEREAS, the City Manager is recommending that the \$1,000,000 be approved.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BLOOMINGTON, ILLINOIS:

That the \$1,000,000 plus 2.6% simple interest loan be authorized.

ADOPTED this 27th day of July, 2009.

APPROVED this 27th day of July, 2009.

Stephen F. Stockton, Mayor

ATTEST:

Tracey Covert, City Clerk

Motion by Alderman Purcell, seconded by Alderman Schmidt that the Intra-fund Loan be approved and the Resolution adopted.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Huette, Schmidt, McDade, Anderson, Hanson, Sage, Fruin and Purcell.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Petition from Eastlake, LLC, Requesting Approval of a Final Plat for the Grove on Kickapoo Creek Second Addition Phase II Subdivision commonly located north of Ireland Grove Road and west of Township Road 2100 East (Ward 8)

RECOMMENDATION: That the Final Plat be approved and the Ordinance passed.

BACKGROUND: On March, 13, 2006, Council approved the Preliminary Plan for the Grove on Kickapoo Creek Subdivision which includes the subject site. The subject three (3) lot subdivision is immediately northwest of the Benjamin School Subdivision which is the future site of a Unit 5 elementary school.

Staff respectfully recommends that Council accept the Petition and pass an ordinance approving the Final Plat for The Grove on Kickapoo Creek Second Addition Phase II Subdivision subject to the Petitioner supplying a surety for any uncompleted public improvements and paying the required tap-on fees prior to recording of the plat.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: The future residential properties will generate property tax revenue and annexation fees. There are revenues and costs associated with the entire Grove on Kickapoo Creek development that are detailed in the approved annexation agreements, and are triggered by construction of utilities or final platting.

Respectfully submitted for Council consideration.

Prepared by:

Jim Karch
Director of Public Works

Reviewed as to legal sufficiency:

J. Todd Greenburg
Corporation Counsel

Recommended by:

David A. Hales
City Manager

PETITION FOR APPROVAL OF FINAL PLAT

State of Illinois)
) ss.
County of McLean)

Now comes EASTLAKE, LLC, an Illinois Limited Liability Company, hereinafter referred to as your Petitioner, respectfully representing and requesting as follows:

1. That your Petitioner is the owner of the freehold estate of the premises hereinafter legally described in Exhibit A attached hereto and incorporated herein (hereinafter referred to as the “premises”) and depicted by the Final Plat of The Grove on Kickapoo Creek Second Addition Phase II, Bloomington, Illinois prepared by Brent A. Bazan, Professional Land Surveyor No. 3715 of the Farnsworth Group on May 27, 2009, which is attached hereto and incorporated herein.

2. That your Petitioner seeks approval of the Final Plat for the subdivision of said premises to be know and described as The Grove on Kickapoo Creek Second Addition Phase II, Bloomington, Illinois.

Wherefore, your Petitioner respectfully prays that said Final Plat for The Grove on Kickapoo Creek Second Addition Phase II, Bloomington, Illinois, submitted herewith be approved.

Respectfully submitted,

EASTLAKE, LLC

By: William C. Doud
Member

Attest: Laurence F. Hundman
Member

ORDINANCE NO. 2009 - 47

**AN ORDINANCE APPROVING FINAL PLAT OF THE
GROVE ON KICKAPOO CREEK SECOND ADDTION PHASE II,
BLOOMINGTON, ILLINOIS**

WHEREAS, there was heretofore filed with the City Clerk of the City of Bloomington, McLean County, Illinois, a Petition for approval of the Final Plat of The Grove on Kickapoo Creek Second Addition Phase II, Bloomington, Illinois, which is legally described in Exhibit A attached hereto and incorporated herein; and

WHEREAS, said Petition is valid and sufficient and conforms to the requirements of the statutes in such cases made and provided and the Final Plat attached to said Petition was prepared in compliance with requirements of the Bloomington City Code.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Bloomington, McLean County, Illinois:

1. That the Final Plat of The Grove on Kickapoo Creek Second Addition Phase II, Bloomington, Illinois be, and the same is hereby approved.

2. This Ordinance shall take effect immediately upon passage and approval and shall be in full force.

PASSED this 27th day of July, 2009.

APPROVED this 28th day of July, 2009.

APPROVED:

Stephen F. Stockton
Mayor

ATTEST:

Tracey Covert
City Clerk

**EXHIBIT A
LEGAL DESCRIPTION**

The following described property has been surveyed and platted under my direction:

A part of the Southeast Quarter of Section 9, Township 23 North, Range 3 East of the Third Principal Meridian, McLean County, Illinois, more particularly described as follows: Commencing at the Southwest Corner of a 7.50 acre parcel conveyed to Rebecca S. Fish-White by Deeds recorded December 7, 2005 as Document Numbers 2005-36869 and 2005-36870 in the McLean County Recorder's Office; thence north 570.09 feet along the West Line of said 7.50 acre parcel; thence west 860.72 feet along a line which forms an angle to the right of 91°-00'-59" with said West Line to a Point of Curvature; thence southwesterly 200.12 feet along the arc of a curve concave to the southeast with a radius of 180.00 feet and the 189.97 foot chord of said arc forms an angle to the right of 148°-09'-01" with the last described course to the Point of Beginning. From said Point of Beginning, thence northwest 150.00 feet along a line which forms an angle to the right of 238°-09'-01" with the last described chord; thence northeasterly 6.33 feet along the arc of a curve concave to the southeast with a radius of 330.00 feet and the 6.33 foot chord of said arc forms an angle to the right of 270°-32'-58" with the last described course; thence northwest 210.00 feet along a line which forms an angle to the right of 90°-32'-58" with the last described chord; thence southwesterly 234.68 feet along the arc of a curve concave to the southeast with a radius of 540.00 feet and the 232.84 foot chord of said arc forms an angle to the right of 77°-32'-59" with the last described course; thence east 210.00 feet along a line which forms an angle to the right of 77°-32'-59" with the last described chord; thence southerly 8.04 feet along the arc of a curve concave to the east with a radius of 330.00 feet and the 8.04 foot chord of said arc forms an angle to the right of 269°-18'-08" with the last described course; thence east 150.00 feet along a line which forms an angle to the right of 89°-18'-20" with the last described chord; thence northeasterly 79.17 feet along the arc of a curve concave to the east with a radius of 180.00 feet and the 78.53 foot chord of said arc forms an angle to the right of 102°-35'-49" with the last described course to the Point of Beginning, containing 1.298 acres, more or less.

Part of Parcel Identification Number 22-09-400-006

Motion by Alderman Purcell, seconded by Alderman Schmidt that the Final Plat be approved and the Ordinance passed.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Huette, Schmidt, McDade, Anderson, Hanson, Sage, Fruin and Purcell.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Petition from Mclean County Commercial Corporation Requesting Approval of a Final Plat for Commerce Park Subdivision, 28th Addition commonly located south of Veterans Parkway and west of Commerce Parkway (Ward 4)

RECOMMENDATION: That the Final Plat be approved and the Ordinance passed.

BACKGROUND: On June 28, 1993, Council approved the Preliminary Plan for Phase IV of the Commerce Park Subdivision which includes the subject site. The site is south of Veterans Parkway and west of Commerce Parkway.

Staff recommends that Council accept the Petition and pass an ordinance approving the Final Plat for Commerce Park Subdivision, 28th Addition subject to the Petitioner paying the fees listed in item 9b of the Annexation Agreement dated June 13, 1998. Since no extensions or modifications to City infrastructure are necessary a surety for uncompleted public improvements is not required.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: Not applicable.

Respectfully submitted for Council consideration.

Prepared by:

Reviewed as to legal sufficiency:

Jim Karch
Director of Public Works

J. Todd Greenburg
Corporation Counsel

Recommended by:

David A. Hales
City Manager

PETITION FOR APPROVAL OF FINAL PLAT

STATE OF ILLINOIS)
) SS
COUNTY OF McLEAN)

TO: THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF BLOOMINGTON, McLEAN COUNTY, ILLINOIS

Now comes McLean Commercial Corporation, an Illinois corporation, hereinafter referred to as your Petitioner, respectfully representing and requesting as follows:

1. That your Petitioner is the owner of the freehold or Lessor estate therein of the premises hereinafter described in Exhibit A attached hereto and made a part hereof by this reference;

2. That your Petitioner seeks approval of the Final Plat for the subdivision to be known and described as Commerce Park Subdivision, Twenty-Eighth Addition which Final Plat is attached hereto and made a part hereof;

3. That your Petitioner also seeks approval of the following exemptions or variations from the provisions of Chapter 24 of the Bloomington City Code, 1960;

None, but subject to the terms and conditions of the Annexation Agreement between Petitioner and the City of Bloomington dated June 13, 1988, and approved September 9, 1988;

4. That the Final Plat substantially conforms to the Preliminary Plan of said subdivision heretofore approved by the City Council; and

5. That your Petitioner hereby dedicates to the public, all public rights of way and easements shown on said Final Plat.

WHEREFORE, your Petitioner prays that the Final Plat for the Commerce Park Subdivision, Twenty-Eighth Addition submitted herewith be approved with the exemptions or variations as requested herein.

Respectfully submitted,

McLean Commercial Corporation, an
Illinois Corporation

By: Laurence Hundman
Its President

ORDINANCE NO. 2009 – 48

**AN ORDINANCE APPROVING THE FINAL PLAT OF THE
COMMERCE PARK SUBDIVISION, TWENTY-EIGHTH ADDITION**

WHEREAS, there was heretofore filed with the City Clerk of the City of Bloomington, McLean County, Illinois, a Petition for Approval of the Final Plat of the Commerce Park Subdivision, Twenty-Eighth Addition legally described in Exhibit A attached hereto and made a part hereof by this reference; and

WHEREAS, said Petition requests the following exemptions or variations from the provisions of Chapter 24 of the Bloomington City Code – 1960, as amended:

All terms and conditions pursuant to Annexation Agreement dated June 13, 1988, approved September 9, 1988, between McLean Commercial Corporation and the City of Bloomington.

WHEREAS, said Petition is valid and sufficient and conforms to the requirements of the statutes in such cases made and provided and the Final Plat attached to said Petition was prepared in compliance with the requirements of the Bloomington City Code except for said requested exemptions and/or variations; and

WHEREAS, said exemptions and/or variations are reasonable and in keeping with the intent of the Land Subdivision and Planned Unit Development Code, Chapter 24 of the Bloomington City Code – 1960 as amended.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Bloomington, McLean County, Illinois:

1. That the Final Plat of the Commerce Park Subdivision, Twenty-Eighth Addition and any and all requested exemptions and/or variations be, and the same is hereby approved, and all dedications made therein are accepted.

2. That this Ordinance shall be in full force and effect as of the time of its passage and approval.

PASSED this 27th day of July, 2009.

APPROVED this 28th day of July, 2009.

Stephen F. Stockton, Mayor

ATTEST:

Tracey Covert, City Clerk

EXHIBIT A

A part of the N½ of Section 15, Township 23 North, Range 2 East of the Third Principal Meridian, City of Bloomington, McLean County, Illinois, more particularly described as follows: Beginning at the southwest corner of Lot 33 in Commerce Park Subdivision 24th Addition recorded as Document No. 99-30598 in the McLean County Recorder of Deeds Office; thence N.86°-16'-44"E. 190.00 feet to the southeast corner of said Lot 33 on the west line of Commerce Park Subdivision 10th Addition recorded as Document No.94-9174 in the McLean County Recorder of Deeds Office; thence S.03°-43'-16"E. 458.84 feet to the southwest corner of said Commerce Park Subdivision 10th Addition on the northwesterly line of Commerce Park Subdivision 8th Addition recorded as Document No. 92-18119 in the McLean County Recorder of Deeds Office; thence S.66°-30'-37"W. 191.09 feet on the northwesterly line of said Commerce Park Subdivision 8th Addition to the northwesterly right of way line of the Norfolk Southern Railroad; thence N.61°-58'-22"W. 183.58 feet on the northeasterly right of way line of said Norfolk Southern Railroad to the southernmost corner of Lot 38 in Commerce Park Subdivision 23rd Addition recorded as Document No. 2001-23505 in the McLean County Recorder of Deeds Office; thence N.25°-32'-43"E. 187.14 feet on the southeasterly line of said Lot 38 to the south right of way line of Finance Drive; thence northerly on the easterly right of way line of said Finance Drive 150.44 feet on a non-tangential curve concave to the northwest having a central angle of 172°-23'-48", a radius of 50.00 feet and a chord of 99.78 feet bearing N.29°-20'49"E. from the last described course; thence N.03°-43'16"W. 180.00 feet on the east right of way line of said Finance Drive to the Point of Beginning containing 2.55 acres, more or less with assumed bearings given for description purposes only.

The Mayor directed the clerk to call the roll which resulted in the following:

Motion by Alderman Purcell, seconded by Alderman Schmidt that the Final Plat be approved and the Ordinance passed.

Ayes: Aldermen Stearns, Huette, Schmidt, McDade, Anderson, Hanson, Sage, Fruin and Purcell.

Nays: None.

Motion carried.

The following was presented:

Motion by Alderman Purcell, second Alderman McDade to amend the Agenda and place Proposed Amendment of Chapter 1 of the Bloomington City Code Providing for Performance of Community Service to Satisfy Citations for Ordinance Violations and Prevailing Wage Resolution after the Text Amendment to Chapter 6. Alcoholic Beverages – Kegs.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Huette, Schmidt, McDade, Anderson, Hanson, Sage, Fruin and Purcell.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Intergovernmental Agreement between the City and the Bloomington Normal Water Reclamation District (BNWRD)

RECOMMENDATION: That the Intergovernmental Agreement be approved, and the Mayor and City Clerk be authorized to execute the necessary documents.

BACKGROUND: On April 13, 2009, staff presented Council a proposed Intergovernmental Agreement with BNWRD to resolve numerous issues that have arisen over the years. This proposed agreement was laid over pending further staff research into questions raised by Council.

A follow up meeting was held between City and BNWRD officials. During this meeting staff learned more about the history of negotiations between both organizations relating to the extension of Alexander Road now referred to as Martin Luther Kings Jr. Parkway. The history of the City's request to obtain right of way for this road extension is as follows:

- The City first approached BNWRD in 1982 to review alternatives for the alignment and design of the intersection of what was then referred to as Alexander Road.
- Minutes from November 8, 1982 show that the Trustees approved conveying 5.1 acres of land to the City. This was in excess of what the City needed for the road. The Trustees recognized that the property on the east side of the road would be of little value to them and conditioned approval of the conveyance upon the City accepting all of the land.
- No action was taken by the City after this meeting. Until the City needed this land, there would be no action needed.
- Recently, staff and BNWRD prepared an Intergovernmental Agreement that would effectuate this property transfer.

Based on these findings it is clear that it was the City that initiated the request to obtain right of way for the future extension of Martin Luther King Jr. Furthermore, while BNWRD was willing to sell land to the City for roadway purposes, the BNWRD officials required that the land east of the proposed road also be included in the transaction.

PROPERTY VALUE: Hannah Eisner, former Deputy Corporation Counsel has provided the following comments regarding the value of property to be acquired by the City:

“We agreed to value the property at .80 per square foot for purposes of the agreement. The current zoning is S-2 given its use as a sewerage treatment facility, but it could be rezoned to M-1. The .80 per square foot value was based on the price the City paid for part of the adjacent property, Lincoln Truck and Auto in 1999. It is safe to assume property values have increased in ten (10) years. I have reviewed recent appraisals that include sales of M-1 property as comparables. Based on the information contained in those appraisals, I think .80 per square foot is well below current market value. In today’s market, in an arm’s length transaction, I would not be surprised if the City had to pay at least \$2.00 per square foot if not more to purchase this land.

The Council also asked about the possibility that the City could postpone acquisition of the easterly parcels and receive a cash payment at this time. The attorney for BNWRD has stated that the district is not in a position to make a cash payment to the City this fiscal year. The District has incurred some expenses with the expectation that the agreement would be approved. They made upgrades to the pump station and designed and obtained easements to construct the new gravity sewer.”

PAYMENT TO BNWRD: The BNWRD Board has also revised the proposed agreement to require an advance cash payment of \$476,316.74 for the City’s past billing error in lieu of installment payments, as well as other obligations made to BNWRD. The District is anticipating substantial expenses building the new gravity sewer. As a result, and based on an updated review of their cash flow needs, they have changed the payments terms as indicated.

POSSIBLE PROPERTY USES: Staff has investigated other potential uses for the easterly properties to be acquired. The City currently lacks a written easement for an existing fifty-one inch (51”) brick sewer crossing the north parcel. The Water department has a need to construct an eight inch (8”) water main across the north parcel sometime in the future. The City could be required to pay for both easements if it does not take title to the property as part of this Intergovernmental Agreement.

Staff has also identified several uses for the 5.4 acre and 2.0 acre parcels of land. The south parcel would be an ideal site for a future west side public works satellite facility. The north parcel would be ideal site for a proposed Dog Park as shown on the attached drawing. There may also be a future need to build a water tower at this location although this possibility has not been substantiated at this time.

It is important to keep in mind that the City installed a twenty-four inch (24”) and an eight inch (8”) water main within the proposed corridor for the extension of MLK Jr. Dr. No easements were acquired from BNWRD prior to construction. This Intergovernmental Agreement will give the City fee simple title to land encumbered with existing and future utility lines, right of way for future streets, and land for future above ground facilities and park uses.

CONCLUSION: The proposed agreement finalizes the performance due from the City and BNWRD under a 1992 Intergovernmental Agreement to construct the Ireland Grove Road Sewer, provides for payment of tap on fees to BNWRD for properties that were connected to sewer as a result of a City construction, and resolves a billing error between the City and BNWRD.

The net result is the City will be required to pay BNWRD a lump sum payment of \$476,316.74. The City will receive three (3) parcels of property valued at \$353,657.64 and BNWRD will construct a gravity sewer with an estimated cost of between \$1,000,000 and \$2,000,000 in return for the City's payments.

COMMUNITY GROUPS/INTERESTED PERSON CONTACTED: Not applicable.

FINANCIAL IMPACT: This will not create any new obligations. All sums due were previously obligated. The lump sum payment will be paid out of a line item in the Water Operations and Maintenance Fund for payments to other Governmental Units, Account Code 74910.

Respectfully submitted for Council consideration.

Reviewed as to legal sufficiency:

Reviewed by:

Todd Greenburg
Corporation Counsel

Craig Cummings
Director of Water

Prepared and Recommended by:

David A. Hales
City Manager

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF
BLOOMINGTON AND THE BLOOMINGTON NORMAL WATER
RECLAMATION DISTRICT**

Purpose

The City of Bloomington, (hereafter referred to as "City") and the Bloomington Normal Water Reclamation District (hereafter referred to as "BNWRD") entered into an Intergovernmental Agreement on March 23, 1992 for construction of the Ireland Grove Sanitary Sewer, a copy of which agreement is attached hereto as Exhibit A and incorporated herein by reference. City and BNWRD incurred additional obligations and made commitments with respect to transferring property and facilities to each other that were not part of the Ireland Grove Sewer Intergovernmental Agreement or any other agreement. Both City and BNWRD

acknowledge having additional obligations and commitments and wish to enter into this agreement for the purpose of establishing the amount each party now owes to the other, the value of property and facilities to be transferred and providing for the manner and date of payment determined to be due.

**Article I
Ireland Grove Sanitary Sewer Intergovernmental Agreement**

1. City’s obligations. City completed construction of all sewer facilities as provided in the Agreement. City was obligated to transfer ownership of all facilities and assign all underlying easements and rights of way to BNWRD upon completion of the new sewerage treatment plant. City does hereby transfer ownership of all sewer mains to BNWRD and has executed an assignment of all easements, a copy of which is attached hereto as Exhibit B.

2. BNWRD’s obligations. BNWRD is obligated to pay City for the cost of constructing the main and acquiring easements and right of way for the main less any tap on fees collected by City. The City costs for construction and easement/right of way acquisitions were as follows:

Construction:	\$1,259,927.30
Acquisition of Right of Way/ Easements:	\$6090.00
 Total Construction And acquisition of right of way/ Easements	 \$1,266,017.30
 Less BNWRD payment	 \$629,963.65
 Less tap on fees paid to City	 \$310,583.28
 Balance due:	 \$325,470.42

**Article II
Additional Obligations**

1. BNWRD Connection Fees. BNWRD deferred payment of the \$1750 connection fee for individuals making sewer connections at the following locations, which connections were made necessary as a result of the City connection projects:

Szarek Subdivision (10 lots)	\$17,500
2104 Fox Creek Road (Dillen)	\$1,750
2011 Fox Creek Road (William and Swee)	\$1,750
2405 Springfield Road (Canine Classics)	\$1,750
2108 Cabintown Road (Guth)	\$1,750

611 W. Hamilton (Schiller)	\$1750
709 W. Hamilton (McWhorter)	\$1750
2102 Cabintown Rd. (Fry)	\$1750
2104 Cabintown Rd. (McWhorter)	\$1750
Total	\$31,500

2. Billing Errors. The City provides billing services for BNWRD. It collects monthly usage charges from BNWRD customers and remits that amount to BNWRD less a billing fee on the number of accounts billed. The City made two mistakes in billing that resulted in underpayments to BNWRD. The City erroneously included deleted accounts in calculating the billing charge beginning in 2000 and continuing until 2007 and, due to a change in billing software, the City collected but failed to remit penalties assessed on BNWRD accounts from 2002 until May 2008.

The City determined that it overcharged BNWRD \$190,628.78 for billing deleted accounts. BNWRD agrees that this is a correct statement of the amount due. The City does not have the data to determine the actual amount of the penalties collected between 2002 and May 2008. BNWRD agrees that the City may use the following method to derive a reasonable estimate of the amount of penalties that should have been paid and that it will accept that amount in settlement of the claim for penalties from 2002 through May 2008. The City will take the total annual revenue collected for BNWRD and apply a percentage to this total revenue for each month back to 2002. This percentage will be based upon the 2008 average for the City's fiscal year. When a full year of data is collected the City will be able to set the actual percentage. Using penalties collected from May 2008 to November 2008, the City calculated the percentage to be 1.75% and applying that to the revenues collected from 2002 to May 2008, the City determined the rough estimate of the amount due to be \$256,000.69. The City will provide BNWRD with a final amount due at the end of the 2008 fiscal year and will share all of the numbers used to calculate that number

Article III
Property and Facilities to be Transferred

1. BNWRD property. BNWRD owns the property described on Exhibit C. City needs all or part of the land for the extension of Martin Luther King Drive and the Constitution Trail and has requested BNWRD transfer the property to City. For purposes of this agreement BNWRD and City agree that the property has the following values:

Parcel 1	\$347,357.64
Parcel 2	\$6,300.00
Total	\$353,657.64

2. Kickapoo Creek pump station and Force Main. The City constructed a pump station and force main for use with the Ireland Grove Sewer before BNWRD's Randolph Township treatment facility came on line. City intended to decommission the pump station and convert the force main to gravity sewer when it was no longer needed. BNWRD wishes to keep the pump station and force main operational for back up in case of disruption in service at the Randolph

Township and City has agreed to transfer those facilities to BNWRD. BNWRD shall owe the City \$30,000.00 for the generator at the pump station and City shall transfer possession of said generator, as well as any documentation connected therewith, to BNWRD.

Article IV Agreement

1. City shall pay BNWRD \$476,316.74, which represents the balance due for the sewer tap on fees, water billing errors and property interests to be conveyed less the outstanding amount due from BNWRD under the Ireland Grove Sanitary Sewer Intergovernmental Agreement. This sum shall be paid on or before August 1, 2009.

2. City shall transfer the Kickapoo Creek pump station and force main with all appurtenant equipment and assign all related easements and rights of way to BNWRD and in exchange for which BNWRD shall design and construct a gravity sewer in a location and with sufficient capacity to serve the same area as the force main. In the event the City decides to design and construct the gravity sewer so that it covers and includes an area larger than the area covered by the current force main, the City shall be responsible for the additional design, construction, easement and right-of-way acquisition expenses associated with the increased coverage. City shall approve the final alignment and review and approve all plans and specifications for the sewer. BNWRD shall be responsible for obtaining any easements or rights of way necessary to construct the sewer. Any costs associated with the acquisition of those property interests shall be considered part of the overall project cost and shall be paid for by BNWRD. The sewer shall be installed and be operational on or before November 1, 2010, BNWRD shall transfer the sewer facilities and assign all easements and rights of way to City upon completion of construction.

3. BNWRD shall convey the property described on Exhibit C to City on or before August 1, 2009.

4. In the event that the estimate of the unpaid water billing penalties is different than the penalties as calculated in Article II paragraph 2, BNWRD and the City agree to make the necessary adjustment between themselves.

5. In the event the City has collected any additional sewer connection fees, other than those listed in Article II paragraph 1, the City shall reimburse BNWRD, for such fees collected, on or before August 1, 2009. The City shall make a search of its records and provide BNWRD with a list of all additional properties, on which connection fees were collected, within thirty days. Should there be any additional sewer connection fees collected by City in the future, they shall be promptly paid to BNWRD.

Article V Amendments

This Intergovernmental Agreement shall be binding upon all parties unless and until amended by agreement of all parties.

**Article VI
Severability**

This Intergovernmental Agreement is severable, and the validity or unenforceability of any provision of the agreement, or any part hereof, shall not render the remainder of this agreement invalid or unenforceable.

**Article VII
Effective Date**

This Intergovernmental Agreement shall continue in full force and effect beginning the 28th day of July, 2009 until such time as it may be amended or revised by the same action that caused its adoption.

The parties hereto agree that the foregoing constitutes all of the agreement among all of the parties and in witness whereof, the parties have affixed their respective signatures on the date indicated below.

City of Bloomington

By: Stephen F. Stockton
Its Mayor

Bloomington and Normal Water Reclamation District

Robert Carter
Its Executive Director

EXHIBIT A

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF BLOOMINGTON AND
THE BLOOMINGTON AND NORMAL WATER RECLAMATION DISTRICT**

WHEREAS, the City of Bloomington, Illinois (hereinafter "City") is a home rule municipality under Article VII, Section 6 of the 1970 Illinois Constitution; and

WHEREAS, the Bloomington and Normal Water Reclamation District (hereinafter "District") is a unit of local government organized under the authority of the Sanitary District Act of 1917 (III. Rev. Stat. ch 42, par. 298.99 et seq.); and

WHEREAS, the City and the District are authorized under Article VII, Section 10 of the Illinois Constitution of 1970 to enter into Intergovernmental Agreements in any manner not prohibited by law; and

WHEREAS, a development on the southeast side of the City of Bloomington which begins in the vicinity of the intersection of Ireland Grove Road and the Little Kickapoo Creek and ends in the vicinity of the intersection of the Little Kickapoo Creek and the ConRail Railroad Bridge, will involve the design, construction and use of a sanitary sewer which will serve the residents of said area (hereinafter "Ireland Grove Sanitary Sewer Project" or "Project") and said project will be completed most efficiently if responsibilities for such design, construction and use are set forth in an Intergovernmental Agreement between the City and the District;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the City and District hereby agree as follows:

SECTION ONE: The District will contract with a consultant to design the Ireland Grove Sanitary Sewer Project and will pay all engineering fees for such design. Such contract will include a provision that the City will be provided with all necessary easement and/or right-of-way plats and legal descriptions which will be required by the Project.

SECTION TWO: The City will be responsible for acquiring all easements and/or rights-of-way necessary to construct the Project, and will pay for all costs of acquisition of such easements and/or rights-of-way necessary for the Project. The location of such easements and/or rights-of-way shall be mutually agreed to by the City and District.

SECTION THREE: The District will provide the City with complete plans and specifications for the Project no later than September 1, 1992.

SECTION FOUR: The City will bid the Project, award the contract, provide construction supervision services and pay all costs associated with the Project. If the sanitary sewer main is constructed of any material other than concrete, the District's consultant will be required to provide additional construction supervision as needed at no cost to the City.

SECTION FIVE: The Project will consist of a 48 inch main instead of the 24 inch main required to serve the pump station to be constructed by the City. The District will reimburse the City for all construction costs caused by the increased pipe size. These reimbursements will be made by the District when invoiced by the City as construction progresses.

SECTION SIX: When the new 48 inch main is needed to serve a proposed sewage treatment plant to be constructed by the District in the future, the District will reimburse the City for the original cost to the City for constructing the main and for acquisition of easements and/or rights-of-way, less any payments made by the District pursuant to Section Five above, and less any tap-on fees collected by the City.

SECTION SEVEN: At such time as the District makes the payment called for in Section Six above, ownership of the 48 inch main shall be transferred from the City to the District, and the City shall convey all easements and/or rights-of-way acquired to construct the project to the District.

SECTION EIGHT: This Agreement shall become effective upon proper execution by the parties and shall continue until terminated by consent of all the parties.

CITY OF BLOOMINGTON

By: Jesse R. Smart
Mayor

ATTEST:

Earlene M. Nelson
City Clerk

Date: March 23, 1992

BLOOMINGTON AND NORMAL
WATER RECLAMATION DISTRICT

E. Burton Mercier

ATTEST:

James R. Pemberton

Date: March 9, 1992

(EXHIBIT C CORPORATION WARRANTY DEED RECORDED DOCUMENT 2010 - 1207
AND 2010 - 1208 ON FILE IN CLERK'S OFFICE)

David Hales, City Manager, introduced this item. Staff had met with the Bloomington Normal Water Reclamation District's (BNWRD) representatives. He cited discussions that began in 1982 regarding Martin Luther King Jr. Dr. A water main was located in the right of way. Land parcels which were part of a package were given reasonable value. There was no specific use intended for these parcels. It was noted that the Council Memorandum contained a section labeled Possible Property Uses. The parcels may be marketable in the future. The cost of the gravity sewer was \$1 million. The billing error would be paid up front, a \$400,000 cash payment. Only twenty percent (20%) of this total had been budgeted. The Water Fund was the past beneficiary.

Alderman Purcell questioned if Article IV (4) was upfront or monthly. Mr. Hales stated this section had been left in by mistake and would be removed.

Alderman Stearns questioned the \$476,000 billing error. Mr. Hales responded affirmatively.

Alderman Stearns questioned if there was anything else. Mr. Hales noted the difference of credits and debits. Mayor Stockton cited the separate fund. He questioned the impact on the budget. Mr. Hales stated there was financing available. The City had sufficient resources for this item. This item had been a long time coming.

Alderman Purcell thanked staff for their answers to the Council's questions. Mayor Stockton questioned payment. Todd Greenburg, Corporate Counsel, stated it was covered by Article IV (1). Mr. Hales recognized BNWRD staff. He planned to invite them to come back as there were additional challenges. He cited the inflow/infiltration issues.

Motion by Alderman Hanson, seconded by Alderman Purcell that the amended Intergovernmental Agreement removing Article IV - 4 be approved, and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Huette, Schmidt, McDade, Anderson, Hanson, Sage, Fruin and Purcell.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Review of the Record of Action by the Zoning Board of Appeals Upholding the Zoning Administrator's Interpretation of Expansion of a Nonconforming Use

RECOMMENDATION: That the Appeal be denied and the recommendation of the Zoning Board of Appeals be upheld.

BACKGROUND: Several years ago the Western Tap appeared before the Zoning Board of Appeals wishing to improve the existing Bar and Grill at the corner of Western and Perry Streets. The restaurant/bar was and still is currently a nonconforming use based on its location in an R-1, Single Family Zoning District. At that time staff recommended denial to the work based on the expansion of nonconformity due to the amount of work being undertaken, thereby, extending the life of the structure and its nonconforming use. However, the Board granted the variances needed to remodel the nonconforming structure.

Recently, the petitioners started construction on a covered area with walls, heat, and television as well as a gazebo in the rear yard. Work was stopped due to a lack of building permits. Subsequently, the work was determined to be an expansion of a nonconforming use. Expansion

of a special use is not permitted by the zoning ordinance nor is it subject to variation by the Zoning Board of Appeals. However, the Petitioner challenged the Zoning Administrator's interpretation of the Zoning Code concerning expansion of nonconformity.

The Zoning Board of Appeals heard the Petitioner's challenge to the Zoning Administrator's interpretation on May 20, 2009.

Staff's assertion was that the zoning ordinances intent is to allow nonconformities to continue until they are removed but not to encourage their survival. Additionally, they are not to be enlarged, expanded, extended or used as grounds for adding other structures or uses prohibited in the associated district. Furthermore, nonconforming uses are declared by the code to be incompatible with the permitted uses in that district. By expanding the area of the building (new enclosure/covered patio), they are expanding the use. This is also the basis for staff's objection for a new free standing covered structure (already under construction). By improving the exterior space, extending the amount of time it can be used, and protecting customers from the elements, this area can accommodate more people for a greater period of time. The increase in customer base and additional space are considered an expansion of the use; requiring additional parking, for a parking deprived business, in a residential neighborhood.

The basis of the Petitioner's arguments was the viability of their current business and that the added structures would not change their operations.

During the testimony, there were statements presented as to the improved relationship between the Western Tap and neighbors due to the physical changes undertaken by the building's owner or operators. Staff's position was not to argue whether the construction was good or bad for the business or for the neighborhood but whether the construction meets the Zoning Code's intent of expansion of a nonconforming use.

After consideration of the testimony presented, the Zoning Board of Appeals voted 4-0 in agreement with the Zoning Administrator's interpretation of expansion of a nonconforming use as presented in the zoning ordinance.

Staff recommends the Council review and make a final administrative determination of the Zoning Administrator's interpretation of expansion of a nonconforming use.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: As in regular zoning cases publication was made in the newspaper and notices were sent to property owners within 500 ft. of the subject property.

FINANCIAL IMPACT: Not applicable.

Respectfully submitted for Council consideration.

Prepared by:

Recommended by:

Mark R. Huber
Director of PACE

David A. Hales
City Manager

Mark Huber, Director - PACE, introduced this item. The case involved interpretation of the zoning code. The issue was expansion of nonconforming use which involved a Special Use Permit in an “R”, Residential area. Staff recommended that the Zoning Board’s action be upheld.

Alderman Hanson questioned if PACE’s staff was charged to work closely with restaurants and taverns if an expansion for a beer garden was requested. Mr. Huber stated this property had been revamped. It had had a patio. The expanded space changed the use. The patio was covered and the property improved.

Alderman Hanson questioned the process for filing a variance. Mr. Huber informed the Council that a nonconforming use could not be expanded.

Alderman Hanson believed that the only remaining option was a rezoning petition. Mr. Huber noted rezoning the property would raise other issues. The area was zoned as R-1C, Single Family Residence District. A rezoning would be considered spot zoning which was restrictive. The code as written meant that the petitioner was in violation. There were solutions available but he was unsure of how workable they would be.

Alderman Stearns questioned how the violation was determined. Mr. Huber restated the site of the patio expansion which included a roof and walls. These changes included installation of heating and a television. He was unsure about the fifty percent (50%) rule. The petitioner had commenced construction of a gazebo. A permit had been denied, but construction had begun. The issue involved interpretation of the code.

Alderman Schmidt questioned the property’s history. She cited staff’s report to the ZBA in 2005. She was confused about comments. Mr. Huber would need to review the staff report. He restated that this property was a nonconforming structure. Nonconforming structures do not match the planned land use.

Alderman Stearns cited the overall mission of zoning. Staff would not argue if the proposed use was good or bad. Mr. Huber stated in the real world the Western Tap would not be there. There were other issues involving this property regarding parking and noise. The code does not allow expansion of nonconforming uses.

Alderman Hanson believed that there was a workable solution. The item should be laid over in order for the petitioner to consider other options. The neighborhood had accepted the business. The smoking issue had been raised. Mr. Huber offered his willingness to work on a solution.

Alderman Sage noted that permits had been denied but construction had already begun. Todd Greenburg, Corporate Counsel, discussed the land use and structures upon same. The Western Tap had been there prior to the City's Zoning Code. The Zoning Code was there to help neighborhoods. Taverns and restaurants were not compatible uses. Staff had no leeway when offering an interpretation. The Council can change the code. Adding a structure would be an expansion of use. The issue could be laid over. Staff could prepare a Zoning Text Amendment addressing unpermitted expansion. Mayor Stockton agreed that the Council could change the Zoning Code. The petitioner could file a Rezoning Petition. The Council had little choice during the current meeting. Mr. Huber suggested allowing the petitioner to exhaust all available avenues. Mr. Greenburg cited Chapter 44, Section 4-6. There was a little leeway to extend the premise with an additional structure. The issue was a nonconforming structure.

Mayor Stockton informed the Council that the Liquor Commission had held a number of hearings requesting beer gardens. The roof addition would be permanent. These hearings were the result of the smoking ban.

Alderman McDade stated there were three (3) reports provided. Two (2) were from 2004 and one (1) from 2005. She requested clarification regarding dates and timelines. Mr. Huber stated earlier reports addressed nonconforming structure verse nonconforming use.

Alderman Stearns questioned an issue on McLean Street. Mr. Huber stated it also involved Special Use Permit. Code identified what could be compatible uses. The carport had been part of the structure. It was a nonconforming structure that was already there.

Alderman Sage questioned the outside patio/smoking area. Mr. Huber restated it was an expansion of a nonconforming use. Mayor Stockton presented the following options: 1.) deny as compelled by ordinance; 2.) lay over the item; or 3.) approve. The Council could consider a Zoning Text Amendment or the petitioner could file a Petition to Rezone. Mr. Huber recommended the Special Use process.

Alderman Sage questioned the petitioner's intentional disregard. Mr. Huber acknowledged there had been some miscommunication.

Alderman Anderson questioned if the Council denied this request would the petitioner be able to refile same. Mr. Greenburg recommended that if the Council was interested in pursuing the Text Amendment, the item should be laid over.

Alderman Purcell questioned the impact on the neighborhood. The expansion would be a code violation. There had been concerns. Mr. Huber noted the issue was the zoning code. It was not about the business or the neighborhood. He did not want to create adverse consequences elsewhere in the City.

Alderman Fruin suggested that the rules be suspended.

Motion by Alderman Hanson, seconded by Alderman Purcell to suspend the rules to allow someone to speak.

Motion carried.

Russ Arbuckle, 1906 Willow Bridge, Normal, addressed the Council. He was the original architect for the work done in 2004/2005. The ZBA did not have authority to grant expansion. The patio had been there. The intention was to preserve the old. The Zoning Code does not encourage survival. He was unable to obtain a permit for the addition of a roof. This change was due to the indoor smoking ban. The gazebo was located fifteen feet (15') from the door. The use was there. A cover was added to the structure. Mayor Stockton questioned the need for a gazebo and a covered patio area. Mr. Arbuckle responded that the patio would be used as an outdoor dining area as it was fifteen feet (15') from the door.

Alderman Sage noted that the gazebo was a new structure. The owner should have contacted the contractor. Mr. Arbuckle clarified that the gazebo had not been built yet. He stipulated that a lean to roof and television had been installed.

Linda Westerfield, 1310 Forrest St., addressed the Council. She spoke on behalf of her parents who lived at 1304 N. Morris Ave. Their rear yard was adjacent from Western Tap. Her home was a block and a half away. Her parents had lived in their home for fifty-three (53) years. Their neighborhood was currently zoned as R-1C, Single Family Residence District. The neighbor to the north had twins and had moved due to the noise. Three (3) properties to the north recently had turned over. Too much money had been spent. She remembered when this property had been a grocery store. The carport had been built to assist a handicapped gentleman. The Western Tap was a neighborhood tavern. There was a landlord and a license holder. The building was totally remodeled in 2004 - 2005. Occupancy was set at eighty-five (85) due to limited parking. There was no reason for expansion. The project had begun without a permit. Mayor Stockton also served as the Liquor Commissioner and did not control zoning. The tavern had expanded its premise and appeared before the Commission after work had been completed.

Tim Jones, 19854 Wesley St., Downs, addressed the Council. He presented photographs to the Council. The bar had chosen to close at 10:00 p.m. Other properties had been remodeled. The structure was reduced. Past photos from 2005 showed the roof. He had attempted to purchase land to expand parking. He was the owner of a building and a landlord for four to five (4 - 5) taverns in town. Mayor Stockton questioned the roof removal in 2005.

Alderman Schmidt noted the offer to purchase land to convert it into a parking lot. Mr. Jones had received no assistance from PACE's staff. He claimed that the adjacent property was zoned as "B", Business. A request to rezone this property would not be spot zoning. The work had stopped and would be removed.

Alderman Hanson noted Mr. Huber's commitment to move forward. Mr. Jones stated in 2005, he requested seven (7) variances and ended up needing six (6) of them. He had tried to work with the City. Staff was not sensitive to the needs of the business.

Alderman McDade noted the photographs provided. She questioned the concrete pad. Mr. Jones had installed the pad in 2005. The gazebo and roof were added due to Smoke Free Illinois.

Jay Taylor, 704 West Locus, Western Tap's license holder, addressed the Council. He obtained a liquor license in 2007. He also held a liquor license at Mulligan's without any violations. Western Tap needed something extra to attract and retain customers. Customers had been exposed to the weather. He had worked with the neighborhood. The lean to would be used as a dining area. A light had been installed the light in the alley. Security had also been added. He had taken ownership on November 1, 2007. He was a hands-on manager. He had been vigilant about occupancy. Mayor Stockton stated the issue was neighborhood livability above tax revenues.

Alderman Purcell stated there were five (5) taverns in his ward. Most of the complaints he had received concerned the Western Tap. Mr. Taylor stated the Western Tap closed at 11:00 p.m. during the week and at midnight on Fridays and Saturdays. He expressed his willingness to meet with Alderman Purcell.

Chuck Crawford, 1303 N. Western Ave., addressed the Council. He stated there was not a full wall. The patio was one and a half inches, (1½"), thick for drainage. His yard was quieter. The food at Western Tap was good. There had been a number of home improvements. The Western Tap enhanced the neighborhood. He had been working with Mr. Jones and Mr. Taylor. He could hear the bands about once a month. This neighborhood bar was a best kept secret.

Alderman McDade questioned the patio. Mr. Crawford stated the noise volume decreased after the roof was installed. The gazebo would not bother anybody.

Motion by Alderman Anderson, seconded by Alderman Schmidt to return to order.

Motion carried.

Alderman Anderson suggested that Mr. Huber pursue other options. He suggested that the Western Tap be given one (1) year to address a workable solution.

Alderman Stearns believed there were limited options. To date, a solution had not been found.

Alderman McDade expressed concern that the secondary issue was erecting the gazebo.

Alderman Anderson stated the change of use was included in the motion. He wanted to uphold the ZBA's action. The burden would fall on the property owner. He did not believe anything should be dismantled.

Alderman McDade was sympathetic to the situation.

Alderman Hanson recommended the issue be laid over.

Alderman Stearns believed allowing one (1) year to reach an agreement would be unfair to all parties involved.

Alderman Huette stated an option was there for the property owner to pursue. It was a nice neighborhood. The Council should uphold the zoning code.

Alderman Sage expressed concern that the Council would set a precedent. There was a pathway and options to a workable solution.

Alderman Huette also expressed concern that other property owners would take a similar approach of starting construction without a permit.

Alderman Stearns agreed with Alderman Huette's comments regarding the neighborhood. Zoning created good neighborhoods. Residential homes and taverns were not compatible. She did not believe this petition was an expansion of use. Mayor Stockton encouraged the property owner and license holder to work with Mr. Huber to find a solution.

Motion by Alderman Anderson, seconded by Alderman Purcell that the Appeal be denied and the recommendation of the Zoning Board of Appeals be upheld with the condition that the property owner be given the opportunity to address a workable solution up to a maximum of one (1) year or when all appeals are exhausted whichever is shorter.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Huette, Schmidt, Anderson, Sage, Fruin and Purcell.

Nays: Alderman Stearns, McDade and Hanson.

Motion carried.

The following was presented:

SUBJECT: Text Amendment to Chapter 6. Alcoholic Beverages - Kegs

RECOMMENDATION: That the Text Amendment for Section 23(a) through (f) be approved, the Council give consideration to Section 23(b)(7) and 23(g), and the Ordinance passed.

BACKGROUND: The Bloomington Liquor Commission has held numerous hearings in 2008 and 2009 regarding a proposed Text Amendment to Chapter 6. Alcohol Beverages to address the issue of kegs within the community.

This issue was initially brought to the Commission's attention by the Bloomington Normal Community Campus Coalition, (BNCCC). This group was formed in January 2005. The group has received a three (3) year grant in the amount of \$300,000 from the Department of Human Services. There were a number of community organizations which were BNCCC participants: Illinois Wesleyan University, Illinois State University, Heartland Community College, Lincoln College, Police Departments from the City, the Town of Normal, Illinois State University, and McLean County Sheriff's Department, Chestnut Health Systems, Project Oz, student representatives from the various colleges, and a Normal Town Council member. The group's focus was keg registration.

The BNCC presented an enforcement strategy for same. A traditional program would be reliant upon the liquor retailers. The burden would be placed upon the licensee. Keg registration often raises a variety of issues: 1.) reactive approach; 2.) industry resistance; 3.) records maintenance; and 4.) out of area purchases. A keg registration program is generally started after there is an incident. This type of program holds the purchaser accountable.

The BNCC sought a combination of keg registration and keg license. When combined, the City would have a proactive and a reactive approach to kegs. The goal of such an ordinance would be to educate and to address various issues, such as occupancy, health, safety, etc. The City's Police Department should see a reduction in the number of calls for service. The group acknowledged that the community was also seeing large quantity purchases of hard liquor. Keg parties are generally hosted at a private residence and not a place of public accommodation. The goal was to inform the party host of the right way to hold an event. A keg ordinance would not solve all of the community's problems. It would provide the community with a tool. Education was one piece and responsibility was another.

The BNCC's proposal involved two (2) main pieces: 1.) responsibility certificate and 2.) City permit. A class "K", Keg liquor license would be required when an individual purchased two (2) or more kegs. These two (2) items would allow the Police Department to check the address, review any calls for service, assist the City and the party host to better manage the event, and help the party host to hold a good, safe event. A class "K" license provided an opportunity for education and enforcement. It would be an enforcement mechanism which could bring about change. The license would be granted by the City. The Police Department would review calls for service at the event address and perform a background check of the individual host, (criminal and ordinance violations).

The kegs must remain at the registration address. Registration helps the individual party host understand the term accountability. It was another tool from a law enforcement context. It would also help the universities address off campus concerns.

The BNCCC would compile data annually. Grant funds could be used to cover the cost of all necessary forms during the grants first two (2) years. (Sample forms have been provided.) The

grant covered McLean County. The City and Town represented sub populations. The group believed that the traditional approach, keg registration, was not effective. The group hoped that the City, the Town, and McLean County would adopt keg ordinances. Work continued with the Town. Concerns regarding privacy issues had been raised. This program should be adopted jointly.

The BNCCC wanted to partner with the spirits industry in an effort to prevent underage drinking. The group saw its goal as worthy. Keg registration would be the starting point. The BNCCC wanted both communities to have the same ordinance.

The liquor retailers also addressed the Commission. A key concern was access to hard liquor. There had been an increase in the consumption of hard liquor. Emphasis should be placed on same. Existing laws were cited. They needed to be enforced. The retailers would know who purchased the alcohol. How to verify the address of the event could be problematic. There was support for a standard form to be provided to all retailers. A key issue for retailers was the return of the keg and its equipment. Retailers charge a deposit for same. The retailers would support any tool which would enhance the role of law enforcement. The Adult Responsibility Form was specifically cited. It should be directed at the purchase of a certain quantity of alcohol. Questions were raised regarding disqualification criteria for a class "K" license. Who would inform the applicant/host and/or retailer if said application is denied. Concerns were expressed regarding the class "K" license. Issues cited included 1.) the rights of business owners, 2.) individual constitutional rights; 3.) restricting trade; 4.) search and seizure laws; and 5.) privacy rights. The proposed ordinance was discriminatory. It only addressed the sale of draft beer. The volume of alcohol sold is not addressed. The sole focus was only on kegs. Data was provided at the Commission's December 9, 2008 meeting that less than 100 barrels had been sold in the City for the entire year. There were only two (2) retailers, (Famous Liquors and Friar Tuck), that sold kegs within the City. The majority of keg sales occurred in Normal.

The Liquor Commission noted that a good portion of keg sales were attributable to the various college campuses. They noted that the Town had the higher percentage of college students. However, keg registration would impact all purchasers of same. The Commission acknowledged the importance of the educational component. Simple registration could be accomplished by the retailer. An educational component would be the next step. A third step would involve linking/attaching said documentation to the keg itself. The final step, "K" liquor license, would involve a short police background check. The Commission's main concern was community safety.

The Commission acknowledged that the BNCCC wanted a proactive keg ordinance which would include an educational component and a permitting process. The Adult Responsibility Form would be completed whenever a keg is purchased. Questions were raised regarding quantity. Issues raised included: 1.) should kegs be tagged; 2.) should the background check address the suitability of the purchaser; and 3.) should there be a "K" license classification. Keg registration would identify the purchaser and establish a standardized paper trail. Keg sales were significant and would be easy to address. The permit/license would be required when multiple kegs were purchased by a single person for a single location. It was noted that a keg can dispense 165

twelve ounce, (12 oz.), servings of beer. A benchmark is generally less than five (5) drinks per guest.

A key issue for the Commission was balance. How to balance the burden placed upon the City, the general public, and the buyer. The educational component would address risk and responsibility. The Commission was aware that there were health and safety issues. In addition, there were privacy issues regarding the buyer. Another key question for the Commission was recognition that there was a problem.

The Commission returned to the four (4) elements: 1.) standard keg registration; 2.) adult responsibility form/educational component; 3.) background check; and 4.) keg liquor license classification. The keg registration form must be at the same location as the keg. Keg registration would be a proactive step. The burden would be placed upon the purchaser and not the retailer. The educational piece, (host responsibility), would occur at the point of purchase. This public awareness portion would inform the potential party host of what constituted a violation and the consequences of same. A class "K" license would need a filing deadline, five (5) days prior to the event was suggested. Issues regarding the class "K" license included privacy issues and the background check.

The Commission noted that the Town must take similar action. There should be consistency between to the two (2) entities' ordinances. City staff was directed to draft a Text Amendment which would be modular in form. It should address the following: 1.) information about who purchase the alcohol and the location of same; 2.) an educational component; 3.) copy of form provided to purchaser to be kept at the same location as the keg; and 4.) class "K" liquor license with a purchasing limit. This text amendment might be extended to hard spirits.

The Commission believed that there was a two (2) faceted approach: 1.) Adult Responsibility Form and 2.) a reasonably developed and administered "K" license. Forms would be needed. The City would need to address civil and criminal liabilities. The Adult Responsibility Form could be applied to all liquor sales. The Commission needed to determine the volume of sale that would require the Adult Responsibility Form and the class "K" license. The City needed to balance citizens' rights versus purchasers' rights versus vendors' rights.

The City of Champaign's ordinance was used a model when drafting the proposed Text Amendment. The draft ordinance was in line with the BNCCC's recommendations. The Adult Responsibility piece was found in Section 35A. Regulation of the Sale of Alcohol in Kegs. It also addressed the class "K" license classification. The process used would be similar to the City's existing Secondary liquor license. There was the provision for a \$50 fee. The class "K" liquor license would address sales in excess of sixteen (16) gallons. The forms used would be addressed outside of the City Code. These forms would address the intent of the proposed ordinance and also address the retailers' concerns.

The Commission sent a proposed Ordinance to the Town of Normal for review. The Town amended the City's draft Ordinance. Normal does not allow keg sales after 10:00 p.m. The Adult Responsibility Form language was included within the Ordinance. The Town's Ordinance

does not list the event date. There was no language regarding notification. The Town's Ordinance would take effect on August 1, 2009.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: The BNCCC, packaged liquor license holders, and liquor distributors were contacted for a number of the liquor hearings. In addition, the agendas for Meetings of the Liquor Commission have been placed on the City's web site since November 2008. There also is a list serve feature for the Liquor Commission.

FINANCIAL IMPACT: Not applicable.

Respectfully submitted for Council consideration.

Prepared by and recommended by:

Stephen F. Stockton
Mayor

ORDINANCE NO. 2009 - 49

**AN ORDINANCE AMENDING BLOOMINGTON
CITY CODE CHAPTER 6**

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Bloomington, Illinois:

SECTION 1. That Bloomington City Code Chapter 6, Section 1 shall be and the same is hereby amended to read as follows: (additions are indicating by underlining; deletions are indicated by strikeouts):

Keg.: Any metal, wooden, plastic, paper or other container designed to hold four (4) or more gallons of liquid and actually containing any amount of alcoholic liquor.

SECTION 2. That Bloomington City Code Chapter 6, be amended by adding Section 23 to read as follows:

Sec. 23 SALE AND POSSESSION OF KEGS.

- (a) No licensee shall sell alcoholic liquor in a keg without first having obtained the signature of the purchaser on an adult responsibility form provided by the City Clerk. The licensee shall retain one copy of the form and provide one copy of the form to the purchaser. The licensee shall retain copies of all such forms for a period of not less than three months from the date of sale and produce any and all forms for inspection by the Liquor Commissioner, his designee, or police officers.
- (b) Any person who purchases alcoholic liquor in a keg from a licensee in the City of Bloomington must sign an adult responsibility form provided by the licensee/seller at the time and point of sale. The form shall contain the following:
 - (1) The licensee's name, address and phone number.
 - (2) The purchaser's name, address and phone number.
 - (3) The driver's license number or other identification used by the licensee to identify the purchaser;
 - (4) The location where the keg is to be used;
 - (5) The date on which the keg will be used;
 - (6) The signature of the purchaser; and
 - (7) The following statements, together with such other statements as may be approved by the Bloomington Liquor Commission:

As purchaser of a keg containing alcoholic liquor, I understand that I am responsible for the proper use of the contents of the keg.

I agree that the contents of the keg will not be sold to another person. This includes selling cups, tickets or charging admission to an event at which the alcohol may be “given” away.

I understand that the legal drinking age in the City of Bloomington is 21, and that the contents of the keg will not be furnished to any person under 21 years of age except as allowed by ordinance.

I understand that I am required to keep a copy of this Adult Responsibility Form with the keg at all times, and to provide a copy to the Police upon request.

I understand that if I do not produce a copy of this form when requested by police, or if the contents of the keg are sold or furnished to a minor, I will be held to have violated a City ordinance.

I understand that the seller of the keg may furnish a copy of this Adult Responsibility Form to the Bloomington Police and that, in the event I purchase two or more kegs from the seller in one day, the seller is required by ordinance to notify the Bloomington Police Department of the sales and to furnish the Department with copies of the pertinent Adult Responsibility Forms.

- (c) Any person who purchases alcoholic liquor in a keg in another jurisdiction other than Bloomington shall sign an Adult Responsibility Form if required by that jurisdiction.
- (d) Any person in possession of a keg containing alcoholic liquor shall keep any required Adult Responsibility Form in the same location as the keg at all times and shall have the form readily available for inspection until the keg is returned to the licensee.
- (e) It shall be unlawful for any person other than a licensed manufacturer, wholesale distributor or licensed liquor retailer to possess a keg containing alcohol in the City of Bloomington in a manner other than as provided in this Section.
- (f) Presumptions.
 - (1) If a keg is found to be on any residential premises and no Adult Responsibility Form is produced, there shall be a rebuttable presumption that any resident of the dwelling unit in which the keg is found is in possession of the keg in violation of this Section. A person so charged

shall have the burden of proofing that he did not have unlawful possession of the keg.

(2) If any keg is used in the unlawful sale of alcohol, there shall be a rebuttable presumption that the person signing the Adult Responsibility Form is responsible for the unlawful sale of alcohol. The City shall have the burden of proving that the keg was used in the unlawful sale of alcohol and the Defendant was the person signing the Adult Responsibility Form. The Defendant shall have the burden of proving that he had no knowledge of the unlawful sale of alcohol and took reasonable means to prevent the unlawful sale of alcohol.

(3) If any keg is used in the unlawful furnishing of alcohol to a minor, there shall be a rebuttable presumption that the person signing the Adult Responsibility Form is responsible for the unlawful furnishing of alcohol to a minor. The City shall have the burden of proving that the keg was used in the unlawful furnishing of alcohol to a minor and the Defendant was the person signing the Adult Responsibility Form. The Defendant shall have the burden to prove that he had no knowledge of the unlawful furnishing of alcohol, and took reasonable means to prevent the unlawful furnishing of alcohol.

(g) Any licensee who sells two or more kegs to the same purchaser during a single day shall notify the Bloomington Police Department and shall immediately forward to the Department copies of the pertinent Adult Responsibility Forms.

SECTION 3. Except as provided herein, the Bloomington City Code, as amended, shall remain in full force and effect.

SECTION 4. The City Clerk shall be, and she is hereby directed and authorized to publish this Ordinance in pamphlet form as provided by law.

SECTION 5. This Ordinance is enacted pursuant to the authority granted to the City as a home rule unit by Article VII, Section 6 of the 1970 Illinois Constitution.

SECTION 6. This Ordinance shall take effect on August 1, 2009.

PASSED this 27th day of July, 2009.

APPROVED this 28th day of July, 2009.

APPROVED:

Stephen F. Stockton
Mayor

ATTEST:

Tracey Covert
City Clerk

Mayor Stockton introduced the item. There was concern about student's alcohol consumption. One remedy was registration of keg sales. It was a larger issue for the Town of Normal. The City would work with the Town. There were four (4) elements to the keg registration: 1.) education; 2.) regulation; 3.) notification; and 4.) license. The Liquor Commission did not support the fourth element, license. There was support for keg registration. It was already being done. The Police Department could request the documentation at any time. Education and an Adult Responsibility Form (ARF) were parts of/to registration. Notification of keg sales would be sent to the Police Department via fax. The Police had the option to drive by the location on the day the keg was to be consumed. There was not a keg license. The Commission supported education and registration. The Council needed to decide on the volume of keg sales that required notification. He recommended that at minimum the Council support the Commission's recommendations. He supported notification when four (4) or more kegs were sold.

Alderman Anderson questioned why the City was different than the Town. Mayor Stockton informed the Council that the Town had a party patrol. The Commission held hearings and provided the Town with a sample ordinance. George Boyle, Asst. Corporation Counsel, addressed the Council. Kegs cannot be transported after 10:00 p.m. in Normal. The Town's ordinance does not include notification.

Alderman Hanson stated that three quarters of kegs sold were purchased in Normal. There should be mutual aid between the City and Town.

Alderman Sage suggested the two (2) Ordinances be identical.

Alderman Schmidt stated the only supplier of kegs in the City was Friar Tuck, located at 2401 Maloney Dr.

Alderman McDade suggested that notification not be included.

Alderman Anderson added matching Ordinances would signal unity and mutual aid.

Alderman Sage did not support notification. Normal's Ordinance was not supported by the Liquor Commission. Mayor Stockton stated Normal's Ordinance was more restrictive. The issue could be revisited. Keg sales were a community wide issue. The Town and City should have a unified approach. He noted that Section 23 (b) (7) was slightly different.

Alderman Sage suggested the Ordinances be identical.

Motion by Alderman Hanson, seconded by Alderman Anderson that the Text Amendment to Chapter 6. Alcoholic Beverage – Kegs be identical to the one passed by the Town of Normal, Ordinance No. 5250, and the Ordinance passed.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Huette, Schmidt, McDade, Anderson, Hanson, Sage, Fruin and Purcell.

Nays: None.

Motion carried.

Motion by Alderman Hanson, seconded by Alderman Purcell to rescind the action taken on Intergovernmental Agreement between the City and the Bloomington Normal Water Reclamation District.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Huette, Schmidt, McDade, Anderson, Hanson, Sage, Fruin and Purcell.

Nays: None.

Motion carried.

Motion by Alderman Schmidt, seconded by Alderman Purcell that the Intergovernmental Agreement marked “Final” be approved, and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Huette, Schmidt, McDade, Anderson, Hanson, Sage, Fruin and Purcell.

Nays: None.

Motion carried.

Motion by Alderman Anderson, seconded by Alderman Huette that the following items be laid over until the Council’s August 10, 2009 meeting: Proposed Amendment of Chapter 1 of the Bloomington City Code Providing for Performance of Community Service to Satisfy Citations for Ordinance Violations; Prevailing Wage Resolution; and Presentation – Pot Hole Program – Jim Karch.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Huette, Schmidt, McDade, Anderson, Hanson, Sage, Fruin and Purcell.

Nays: None.

Motion carried. (Viva voce)

MAYOR'S DISCUSSION: None.

CITY MANAGER'S DISCUSSION: None.

ALDERMEN'S DISCUSSION: Alderman Sage had observed that the Zoning Board of Appeals (ZBA) had less than five (5) votes. He questioned absenteeism.

Alderman Fruin thanked David Hales, City Manager, and staff for the monthly report. It had addressed important issues. Mr. Hales stated the report was a work in progress. There were meaningful issues to discuss. The next report would be financial. Mayor Stockton suggested key indicators be included.

Alderman Schmidt noted the Council's meeting started at 4:00 p.m.

Alderman Purcell had attended Peoria's City Council meeting. They reported a \$10 million deficit. Mayor Stockton informed the Council that he had spoken with the City of Peoria's Mayor Jim Ardis. Bloomington was ahead of the curve.

Motion by Alderman Anderson, seconded by Alderman Purcell, that the meeting be adjourned. Time: 10:30 p.m.

Motion carried.

**Tracey Covert
City Clerk**

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