

**SUMMARY MINUTES OF THE SPECIAL SESSION
CITY COUNCIL MEETING
City Hall Council Chambers 109 E. Olive Street, Bloomington, IL 61701
Monday, April 9, 2018; 5:30 PM**

Call to Order

The Council convened in Special Session in the Council Chambers, City Hall Building at 5:30 p.m., Monday, April 9, 2018. The meeting was called to order by Mayor Renner.

Roll Call

Mayor Renner directed City Clerk Cherry Lawson to call the roll and the following members of Council answered present:

Aldermen Dave Sage, Mboka Mwilambwe, Karen Schmidt, Jamie Mathy, Scott Black, Kim Bray, Amelia Buragas, Diana Hauman and Mayor Tari Renner.

Staff Present: Steve Rasmussen, Interim City Manager; Jeffrey Jurgens, Corporation Counsel; Cherry Lawson, City Clerk; Jim Karch, Public Works Director; Eric West, Assistant Fire Chief; Nicole Albertson, Human Resource Director; Jay Tetzloff, Parks, Recreation, Cultural Arts and MPZ Director; Bob Mahrt, Interim Director of Community Development; Melissa Hon, Assistant to the City Manager and other City staff were present, and Greg Moredock, Special Counsel from Sorhling Northrup by telephone.

Public Comment

Mayor Renner opened the meeting to receive Public Comment. The following citizen offered comments.

Jeff Lindsay for the Mizell Family	David Brockmann	Gilbert Reyes
Paul Kinsella	Jim Koehl	Tom Miller
Ron Longstreth	Ryan Esposito	Jane Whitwood
Jack Penn	Jeff Lindsay	Sue Mizell

Consideration and potential action or direction of various proposed options regarding existing boat docks on non-leased marginal land at Lake Bloomington where ownership is claimed by non-lake front leaseholders, as requested by the Water Department. *(Recommend utilizing one or a combination of the following options, provide staff direction related to existing boat docks on non-leased marginal land at Lake Bloomington where ownership is claimed by non-lake front leaseholders. Staff recognizes that approaches may vary based on individual*

circumstances and therefore the options below may be applied differently to different categories of boat dock owners.

Mr. Rasmussen provided an overview of this item stating, staff began to look at the docks in February of 2017. The City brought an ordinance before Council for consideration to codify the Water Department policy relating to the issuance of dock permits for docks that were on waterfront property, but to not issue permits for docks that had been placed on city-owned park land or city-owned property. City staff felt that it would be appropriate to codify that so that the City Council then could act on that, as opposed to being a Water Department policy, it would then be an ordinance that would direct the Water Department to do that on an on-going basis.

There was much discussion on this item, and Council has to look all of the docks that currently were on city-owned property. So really, there are two issues. The issue that needs to be addressed is how this is handled on an ongoing basis. The ordinance would address how situations like this are handled on an ongoing basis in the future with the Water Department.

He explained that he had been asked by members of the Council, what would happen if the City did nothing. If Council does nothing with those docks as they currently exist, staff would do what we do with all other situations where there is an issue that is non-conforming with City ordinance. We would issue a citation. If the issue is not cured, then that would be sent to an Administrative Court for an adjudication. However, staff will follow the direction of the Council.

Mr. Yehl stated, the City has spoken with the dock owners who are in attendance. This topic really resides in three areas at Lake Bloomington: 1) Protection of the water supply; 2) Consistent Community Development, 3) Access to the Lake.

He provided an overview of the materials in the council packet stating, the Water Department believes the ordinances, the standards, and previous council action should be applied consistently sans any direction to the contrary from the City Council. He spoke of the inconsistencies of following the ordinances; however, stated the City has to move forward with providing consistent approaches to community development permitted at the lake, as well as providing access to all to enjoy.

When the lake was created, it was envisioned for multiple uses, multiple parties. The City created lots that people are able to lease and live next to; created access areas for boat ramps so people could fish and enjoy recreation; then parks; and created not-for-profit areas. We have to take into consideration what the lake was developed originally for; what it has evolved over time, and need to make sure those are addressed with everyone. Half of the dock owners listed, are non-city leaseholders. They own private land near the lake. They're not on the land.

Mr. Yehl presented a PowerPoint presentation reviewing property ownership at Lake Bloomington. Blue is water. Blue is the reservoir. Green and orange are city-owned land. The green in these pictures, and this is a graphical representation that is a leasable or platted lot. So the greens are lots that we can lease out to our leaseholders. They can construct their homes and other infrastructure based on county and city guidelines. The red is marginal land, non-leased. There is a strip between

the lots and the reservoir. In 1950 is when the access area was first discussed, it was distinguished between on the lakefront leaseholders and off the lakefront leaseholders. Council set by Ordinance, "Off the lakefront leaseholders have access to the lake. Access, the ability to cross to the lake and enjoy the lake through the red land from their leased lot."

The City looked at many options and spoke with many different avenues and people, as well as Council, and came up with the three options. In essence, we can refer them to Administrative Court, and they would be evaluated equally or individually. We can offer to buy them for an appraised value, take ownership and then do with it what we want. In some cases, the City would remove them. We may make them into a public area, or move them to a different public area. This option reckons back to the 1977, '78 action of Council where one non-leased access area was leased to an adjacent leaseholder.

It was brought to Council's attention the following year was inappropriately done as it was against what was set aside in 1950. As a result, Council decided to rescind that lease. We heard tonight that some individuals, still in that same year, moved forward and constructed seawalls, grading, and essentially build a dock all the way across that. Essentially, taking the area that the Council had, in their estimation, in error, leased back and took that for themselves. This option gives back to, we can make them whole, or make it a public area again. The last one is give them a temporary permit for six months, and allow the residents to get through the season.

If the residents choose none of those, we can individually look at them in Administrative Court. As Mr. Rasmussen stated earlier, if Council choose not to provide additional direction at this time, the Water Department administration will continue forth with our current ordinances, standards, and guidelines. If you are a resident and are a lakefront leaseholder, we would issue permits for docks within current criteria. If you do not, you're not a lakefront leaseholder, we would continue to not issue permits for those dock holdings.

Alderman Hauman asked for an overview of the Administrative Court process.

Mr. Rasmussen explained, the process that the Water Department would take would be to issue citations. Notice would be given, and if there's not compliance, it gets in front of a Hearing Officer, who would then hear both sides of issue. The Hearing Officer would be required to evaluate each case. They would likely look at whether or not permits had been issued, whether or not the dock was constructed in compliance with the permit, and the code provisions. Then the Hearing Officer would render a decision. I believe the current fine is \$250 per day. There would be potential monetary fines associated with violating the current code provisions.

Mr. Moredock stated, specifically note that one of the things the court typically orders is abatement, which in this case would be removal of the docks. In addition to the fines, the Administrative or the Hearing Officer would also order that the docks be removed within 35 days, if they're not permanent property.

Alderman Black, if the court found in our favor. Mr. Moredock affirmed.

Alderwoman Hauman asked whether it would be possible to have it not go through the nonconforming process and being cited, if somebody opted just to go straight to Administrative Court.

Mr. Rasmussen stated, typically, there has to be a complaint filed first. A citation would be issued first. That is typically how the process. If the Hearing Officer here at City Hall were to find in favor of the City or vice versa, that can also be appealed then to the Circuit Court. So there is appellate protection within that process, as well.

Alderman Black stated, over the last year, Council and staff talked many times about these issues. He has spoken to residents in Ward Seven about this topic, most folks are like, "What are you talking about? Why can't you fix this road or do this thing in the area," but one recurring motif I continue to hear at neighborhood association meetings and stuff and those types of events has been, "Why does the city even allow any boats or docks on our water supply?"

Mr. Yehl responded from what I know, boating recreation has been allowed from the beginning. So we have to take that into consideration. What's the primary goal with the complimentary uses? What are those impacts? It's been allowed for as long as the lake has been there. It was originally developed in slightly a different scenario. It might have been row boats. It might have been sailboats. At one point, there was power boat racing. He would envision that erosion we have now on our shorelines, and the impact to our reservoir.

The Water Department is of the opinion that there's good complimentary and secondary uses. I wouldn't want to recommend that we remove all boats, but there's a lot of different reservoirs that take an approach in today; should we only allow certain types of boats or certain types of engines? Should they all be electric? Should they all have to be four stroke? Should they all be two stroke with more or less pollution? There are some studies that show quite a bit of gas and oil in older two strokes create air and water pollution. Should it be just human powered? There's lots of different discussions. I think that would be a lengthy discussion. That would be difficult to get everybody to agree, but it's certainly one worthy of continued effort, but to answer your question, they've been there for a long time.

Mr. Rasmussen stated, when modern reservoirs are established, a fence is simply placed around it and do not allow any boating or housing so that we do not get into this situation. As you know, at Lake Evergreen, which is also a part of our reservoir, we do not allow any houses. The reason that we have the situation we have now was in 1934 and '35 when we first started out there, it was not a big deal. The City allowed some homes to be built, and boating to occur. That was not a problem 100 years ago. Now, the population has increased. The stress on the water has increased. We are confronted with what we have here today. It just evolved that way from 100 years ago.

Alderman Black stated, in Ward Seven, that question continues to come up again and again and as water resources are always scarce and a concern of ours, we should be vigilant in protecting that resource. In his opinion, he would select option one or three. Going to Administrative Court is a solution that would go and take, force things to an individual basis.

I also might recommend that we do a public hearing, maybe Planning Commission hosts it. A

public hearing may allow that in a formal process. They can take testimony. We can include it in the final recommendation. This is not a topic we should be lingering on. Again, I saw that in option sample three, we pick six months. That seems pretty quick. You know, I would envision that being maybe at the end of summer of next year of 2019 perhaps if we're looking to craft some final motions.

Alderman Mathy stated that he had spent a significant amount of time talking to residents and people and staff and everybody else on this issue. Council did not receive comments from people who feel like there's a negative impact on their lakefront property because of the docks and the marginal land. There are residents who have unpermitted docks who are telling us that they are retaining an attorney to potentially fight this. We have people who live on property that were there are permitted docks. He would not be in favor of any solution that we put forward where we take sweeping action, one action applies to every dock. The City need to do something on an individualized basis. I think that there are definitely some folks that have very good arguments as to why they should be allowed to keep their docks. We have past city employees who maybe didn't follow our own rules. And it's not the people who built docks' fault, if we didn't follow our own rules.

He would like us to see a solution where we take the number of docks that we're talking about here and we divide them up among Council to work in one or two's where Council actually meeting with these residents on an individual basis and work through that process, as well.

Alderman Mwilambwe stated this is a complicated issue, but asked what happens in terms of health-related issues with the docks, being on water or wherever they are?

Mr. Yehl stated, docks bring boats, docks bring body contact sports. Potentially swimming, sailing, jet skiing, the substance of those types of things. Not jet skis. The same point. The American Water Works Association, which is a national organization indicated in 2017, "Body contact recreation and two-cycle gas engines should be discouraged or prohibited on drinking water supplies." Boats can create sediment problems, phosphorous problems. They can destroy the vegetation on the bottom of the lake, especially in low, shallow areas. We have some low areas where we have docks. In using a boat in the shallow area, the propeller's going to move, stir and move sediment in the water. It creates turbidity. It creates phosphorous.

Turbidity is one of our stringent controls that we have to treat and keep out of the water. In fact, with all the rain, which was grey because they can fill up our reservoirs required us to pump from a different reservoir because it brought in so much sediment at that time. It also creates phosphorous from the soils, the erosion from the banks. Phosphorous helps algal blooms. The City's water supply did not taste well in the fall in winter months. The Water Department received many calls and concerns. Algal blooms and what we are doing to try to make that better. Boats can create those issues. Body contact sports, whether it's just swimming or skiing or jumping off into the dock increases the likelihood of pathogens in the water, increases the likelihood... They spend \$200,000 a year stabilizing our shorelines.

Alderman Mwilambwe asked whether there is any negative effects from the docks themselves.

Mr. Yehl responded stating, the docks themselves, presuming that there's no boat on the dock or no one is jumping off the dock, a lot of our docks are on seawalls, so the shoreline is stabilized. There are some docks that are hooked directly to the shoreline itself. When that installation occurs, when that use occurs, it has the greater potential for erosion and disturbance of that natural habitat around the lake. We would prefer to have our lake encompassed with buffer strips, vegetative buffer strips, of 20, 30 feet wide so that anything that had to go through it was filtered, the sediment dropped out, and we didn't have access to it. There are some incremental disturbances from docks, depending on how they're constructed and where they're specifically constructed at.

Alderman Buragas asked about the sample motion number two. That refers to purchasing the docks at a fair market value. She asked whether the City has a cost associated with that as of yet. Mr. Yehl stated, they estimate that approximately no more than \$40,000. We did have appraisals done on a sampling of docks, approximately six of them. And they range generally in the \$2,000 to \$3,000 range. One or two are significantly higher, based on the construction of them.

Alderman Schmidt asked what the likelihood of grandfathering docks. Mr. Yehl responded stating, from the City's perspective, Council asked staff to enforce the guidelines, ordinances, council actions in place. That is where those options came from, from our point of view. The Water Department feel that the options we presented are within those guidelines, ordinances, and past practices. Council can make any change it wish too towards the process. To your question, it sets a precedence that I don't know that we want to set. It would set a precedence not only at Lake Bloomington, but keep in mind the same ordinance that govern Lake Bloomington govern the City of Bloomington. If you're setting a past practice of grandfathering in docks at the lake, just take into consideration there are other issues not only at Lake Bloomington, but across the city that may be impacted or come before you in the future.

Mayor Renner asked for clarification stating, if Council does nothing, does not act this evening, then the default would be go into Administrative Court. Those things would be handled on an individual basis. If we are concerned about some of the individual nuances of individual cases, one action might be to do nothing.

Mr. Rasmussen affirmed stating, the Water Department has said if there is no other direction, it's their intent to begin the process of evaluating what's out there, begin citing, issuing citations, and bringing these forward in an administrative Court at some time period in the future. Mayor Renner stated, in that situation, people wouldn't be grandfathered in, but their individual circumstances would be taken into account on a case-by-case basis. Mr. Rasmussen confirmed.

Motioned by Alderman Black to move forward with sample motion option three with a caveat that instead of six months, it's 18 months. Mayor Renner clarified that that motion would be an amendment. There was no second to this motion. Therefore motion dies for a lack of a second.

Alderman Mwilambwe asked how that be different from doing nothing. Mr. Yehl stated, in essence, that pretty much says, basically tells staff there is going to be a grandfathering period of 18 months where the City is not going to be issuing citations. Staff were not going to be out there

doing that. Obviously, no new permits are going to be issued during that period of time, but it's going to be at least 18 months. It would get through two more summers where people could utilize their docks. They have 18 months to get rid of them, make arrangements to start getting rid of them. If not removed within the 18 months, then we could go in there and start citing them. The biggest difference there is time, the time that that allows.

Mr. Yehl clarified stating, as it's written, an intent is we offer that option to the dock owners. If they enter into that permit for 18 months, then we have agreement in writing. If they choose not to enter into an 18-month permit in this case, then we would just need to cite them and take them to Administrative Court. I think that's the second half of that motion, as it's written.

Alderman Buragas stated, if Council were to approve this, every case eventually will be determined on a case-by-case basis, whether it happens now because they didn't want to sign into the 18-month extension or after the expiration of the 18 months. Mr. Yehl stated, presumably that would be correct, as dock owners, even after 18 months, may not still agree to remove them at that time.

Alderman Mathy reiterated his earlier comments. Mayor Renner asked how that different from what Administrative Court would do. Alderman Mathy expressed concern and discomfort over having to cite individuals and send them to Administrative Court.

Alderman Painter stated, if we do nothing, how is that different from option one? Mr. Yehl stated there is no difference.

Motioned by Alderman Painter seconded by Alderman Bray that staff move forward with motion for option one.

Alderman Bray stated, these are tough issues, and they do need individual attention by a consistent fact finder and decider; which is what we could see from the Administrative Law approach versus breaking it up among the Council Members. She expressed concern with a sense of inconsistency as the approach may differ in some aspect. That would be the most even-handed manner in which to handle it. She is swayed by the commentary that folks need to live in a healthy community with some predictability. Though she appreciates the comments that were made about the fact that, folks would just like for this to be over with.

Alderman Hauman asked whether it would be possible to waive the daily fine, if we go with the Administrative Court routine.

Mr. Rasmussen stated in Administrative Court, it's not uncommon. You know, if we get abatement a lot of times, we'll lower, discount, or waive the fines. Staff will go back and review this and come forward with a plan as to how to approach this. The goal here is, compliance, much like with our Administrative Court on housing.

Motioned by Alderman Painter seconded by Alderman Bray that staff move forward with motion for option one.

Mayor Renner directed the Clerk to call the roll which resulted in the following:

Ayes: Aldermen, Sage, Mwilambwe, Buragas, Painter, Hauman, Bray, and Schmidt.

Nays: Aldermen Scott Black and Jamie Mathy

Motion carried.

Mr. Rasmussen stated, this is a difficult issue for all that is concern, and thanked Council, staff, and the residents that attended the meeting. The City will look forward to having some issues adjudicated here on a case-by-case basis. We thank you very much for your time.

Alderwoman Hauman asked how realtors are being brought up to date on these property issues. That there should be some accountability and responsibility so that this issue is no longer perpetuated. Mr. Rasmussen stated they have spoken to the Realtors Association on two or three different occasions. They all understand that very well, and there should not be any misunderstandings, certainly on a going-forward basis, that any realtor will warrant that a dock goes with a picce of property, unless they absolutely have assurance from the Water Department and the city.

Sample Option 1: All existing boat docks not conforming to the ordinances, regulations, policies and standards of the City of Bloomington, having been constructed upon land set aside for access easements for off-the-lake lots and the general public, shall be removed by the owner or shall be a issued violation notice and made subject to the Administrative Court system for remediation.

Sample Option 2: All existing boat docks not conforming to the ordinances, regulations, policies and standards of the City of Bloomington, having been constructed upon land set aside for access easements for off the lake lots and the general public, shall be removed by the owner voluntarily or shall be purchased by the City of Bloomington for the appraised value. The owner(s) of each boat dock shall be compensated for the appraised value of the boat dock by the City of Bloomington and ownership of the boat dock will be transferred to the City of Bloomington. Owner(s) who choose not to sell the boat dock to the City will be issued a violation notice and made subject to the Administrative Court system for remediation.

Sample Option 3: All existing boat docks not conforming to the ordinances, regulations, policies and standards of the City of Bloomington, having been constructed upon land set aside for access easements for off-the-lake lots and the general public, shall be granted a temporary permit for the dock that expires in either six (6) months or upon transfer of the property, whichever is sooner. Upon the end of the six (6) month permit or upon transfer of the property, whichever is sooner, the permit holder will be required to remove the boat dock at the expense of the permittee. Owner(s) who choose not to obtain a permit from the City will be issued a violation notice and made subject to the Administrative Court system for remediation.

(Presentation by Bob Yehl, Water Director, 10 minutes, City Council discussion, 40 minutes.)

5. Adjourn *(Approximately 6:50 p.m.)*

Motioned by Alderman Schmidt and seconded by Alderman Hauman to adjourn the meeting, 6:44 PM

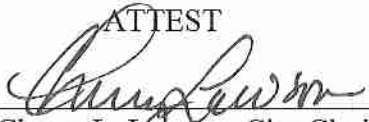
Motion Carried. Viva Voce

CITY OF BLOOMINGTON



Tari Renner, Mayor

ATTEST



Cherry L. Lawson, City Clerk