

City Council of the City of Carbondale, Illinois
Regular Meeting
May 4, 2004

The City Council of the City of Carbondale, Illinois, held a regular meeting on Tuesday, May 4, 2004, in City Council Chambers of the Carbondale Civic Center, 200 S. Illinois Avenue. Mayor Brad Cole called the meeting to order at 7:00 p.m. with the following-named members of the City Council present/absent:

1. Roll Call

Present: Councilwoman Corene McDaniel, Councilwoman Margaret Flanagan, Councilman Chris Wissmann, Councilman Steven N. Haynes, Councilman Lance D. Jack, Councilwoman Sheila Simon and Mayor Brad Cole

Absent: None

Also present were City Clerk Janet M. Vaught, City Manager Jeffrey W. Doherty and various members of the City's administrative staff.

2. General Announcements and Proclamations

Councilman Wissmann announced that over 16,000 students in the community are finishing up their studies for the semester and will be leaving over the summer. The City will miss them and looks forward to their return in the fall.

Councilman Wissmann also announced that Carbondale Conversations for Community Action completed its first phase on Saturday and some recommendations will be forthcoming. He looks forward to seeing where this leads.

Mayor Cole announced that graduation ceremonies were conducted immediately prior to this Council meeting for the 20th class of the City of Carbondale Police Department's Citizens Police Academy.

Mayor Cole announced that Senator Ralph Dunn passed away the prior evening.

Mayor Cole proclaimed May 2-8, 2004 as "Youth Week" and presented the proclamation to Megan Romano. The Mayor noted that the Youth Appreciation Day ceremony would be held at 10:00 a.m. on Saturday, May 8, at Carbondale Middle School. Mayor Cole also proclaimed May 2004 as "Mental Health Month" and presented the proclamation to Karen Freitag of Southern Illinois Regional Social Services. He also proclaimed May 9-15 as "Suicide Prevention and Awareness Week" and presented the proclamation to Judy Ashby.

3. Citizen Comments and Questions

Timothy Donohue, 307 S. Graham, again asked that the issue of motorized scooters be placed on an upcoming Council agenda. Mayor Cole noted that staff is doing research and that the issue has been tentatively set for discussion by the Council at the May 18th meeting.

Cornelius Crane of Makanda noted that he had participated in the Study Circles experience and suggested that the City of Carbondale embrace R. Buckminster Fuller as the City's icon, similar to Abraham Lincoln in Springfield, Popeye in Chester or Superman in Metropolis. He added that this would also be an opportunity for the City to unify with Southern Illinois University in recognition and celebration of R. Buckminster Fuller and to bring people to the community. He also noted that the RBF Dome NFP is attempting to raise \$25,000 in the community in support of the Buckminster Fuller Dome Home. Contributions may be sent to RBF Dome NFP at 407 S. Forest or online at www.buckysdome.org.

4. Consent Agenda

Presented for Council approval on the Consent Agenda were the following items and corresponding recommendations:

1. Approval of Minutes. Recommendation: Approve minutes of the Regular City Council meeting held on April 20, 2004.
2. Warrant. Recommendation: Approve Warrant #920 for period ended April 12, 2004, in amount of 1,999,734.06. (Exhibit A-5-4-04)
3. Acceptance of Minutes of Boards, Commissions and Committees. Recommendation: Accept Carbondale Information and Telecommunications Commission of March 3, 2004; Energy and Environmental Advisory Commission of February 12, 2004; Library Board of January 14, February 11 and March 17, 2004; Planning Commission of April 7, 2004 and Preservation Commission of March 15, 2004.
4. Illinois Municipal League Legislative Bulletin 2004-09. Recommendation: Accept and place on file.
5. Ordinance annexing a 1.34 acre parcel owned by Gregory and Margaret Lewis at 1945 North New Era Road. Recommendation: Approve. (Ord. 2004-31; Exhibit B-5-4-04)

Mayor Cole asked if anyone would like any items removed from the Consent Agenda. There were no items removed from the Consent Agenda.

S. Haynes moved, S. Simon seconded, that the Council approve Consent Agenda items 4.1 through 4.5. VOTE: Ayes: C. McDaniel, M. Flanagan, C. Wissmann, S. Haynes, L. Jack, S. Simon and B. Cole. Nays: None. Motion declared carried.

5. Public Hearings

1. Public Hearing on Authorization for the City of Carbondale to acquire certain property located within the Enterprise Zone through the use of Quick Take Eminent Domain:

The minutes of this public hearing were transcribed separately.

6. General Business

1. Resolution approving Bicentennial Industrial Park, 5th Plat, located at the northwest corner of North McRoy Drive and East Miller Court:

S. Simon moved, C. McDaniel seconded, that the Council adopt the Resolution approving the subdivision plat for Bicentennial Industrial Park, 5th Plat. VOTE: Ayes: C. McDaniel, M. Flanagan, C. Wissmann, S. Haynes, L. Jack, S. Simon and B. Cole. Nays: None. Motion declared carried. (Res. 2004-R-36; Exhibit C-5-4-04)

2. Resolution approving an amendment to the final BPL, Planned Business Development Plan for Packlite Outdoor Gear at 2525 Fairview Drive:

S. Simon moved, C. Wissmann seconded, that the Council adopt the Resolution approving the B-PL Development Plan for Packlite Outdoor Gear at 2525 Fairview Drive. VOTE: Ayes: C. McDaniel, M. Flanagan, C. Wissmann, S. Haynes, L. Jack, S. Simon and B. Cole. Nays: None. Motion declared carried. (Res. 2004-R-37; Exhibit D-5-4-04)

3. Ordinance approving and Resolution denying Gerald R. Dunn Jr.'s request to rezone 4.25 acres west of 3686 and 3698 South Illinois Avenue from AG, General Agriculture, to RR, Rural Residential:

C. Wissmann moved, M. Flanagan seconded, that the Council adopt an ordinance to rezone 3686 and 3698 South Illinois Avenue from AG, General Agriculture, to RR, Rural Residential. VOTE: Ayes: C. McDaniel, M. Flanagan, C. Wissmann, S. Haynes, L. Jack, S. Simon and B. Cole. Nays: None. Motion declared carried. (Ord. 2004-32; Exhibit E-5-4-04)

4. Resolution approving and Resolution denying a Special Use to allow a Day Care Home II in an R-1-5, Low Density Residential District at 301 S. Friedline Drive:

S. Simon moved, C. Wissmann seconded, that the Council adopt a Resolution approving a Special Use permit to allow a Day Care Home II in an R-1-5, Low Density Residential District, for property at 301 S. Friedline Drive, with the following conditions: (1) the special use is limited to a Day Care Home II only under the operation of Jennifer and Philip Burke. The special use may not be transferred upon the future sale or rental of the subject property; (2) the special use for a Day Care Home II shall be limited to no more than four children, plus the family's natural, foster, or adopted children, twelve years or age or under; and (3) the special use will require the construction of one additional off-street parking space and must be constructed prior to operating the day care. DISCUSSION: Speaking in support of the special use were applicant Jennifer Burke and clients/parents Lori Martin, Laura Bishop and Matthew Bishop. Speaking in opposition to the special use were Lu Lyons of 210 Friedline, Ellen Cotten of 306 Orchard Drive and Lyn Mowry of 304 Friedline. VOTE ON MOTION: Ayes: C. McDaniel, M. Flanagan, C. Wissmann, L. Jack, S. Simon and B. Cole. Nays: S. Haynes. Motion declared carried. (Res. 2004-R-38; Exhibit F-5-4-04)

5. Ordinance authorizing the City of Carbondale to acquire certain property located within the Enterprise Zone through the use of Quick Take Eminent Domain:

Councilwoman Simon asked if this item could be postponed for consideration until the next Council meeting. At the Mayor's suggestion and for the purpose of opening discussion on this item, S. Simon moved, L. Jack seconded, that the Council adopt an Ordinance authorizing the City of the Carbondale to acquire certain property within the Enterprise Zone through the use of Quick Take Eminent Domain.

DISCUSSION: Attorney Darrell Dunham, 2903 W. Kent, indicated he represented the owners of some the property proposed to be acquired through quick take. He expressed concern about the speed at which this is happening, adding that the Enterprise Zone was approved, there was a meeting in April and now in May the City is authorizing quick take. He asked if there is a reason in terms of financing or something else which requires the City to be on a fast-track. He asked that *if* they can be told about the actual plan, adding that they understand that there is going to be a supermarket or some kind of grocery facility developed. He asked if they are allowed to keep the real estate improvement they have at 307 East Walnut, would that "do violence" to the plan. He also asked if there would be time for the City to consider the alternate plans that his clients presented to the City this morning. He also asked why the landowners and public cannot have access to the appraisal adding that the landowners do not know the basis for the offers. He said if it is clear that the appraisal is close to the fair market value, that's one thing. However, they are in a difficult situation in terms of trying to make intelligent decisions. Mayor Cole said that to his knowledge there has not been a request to receive the appraisal. Attorney Dunham said he doesn't know if there has been a request, but he is now requesting a copy of the appraisal. Referring to an earlier comment made by Mr. Dunham in which Dunham said negotiations were ongoing but the property owners had not had an opportunity to review the appraisal and therefore could not accept or reject the offer from the City, Mayor Cole noted that written rejections were received from the property owner for the offer that was presented by the City. City Manager Doherty said that the appraisals were shared with the property owners on Monday morning, at which time he went over the appraisals with them in detail. The property owners did not ask for a copy so a copy was not provided. Mr. Doherty said he would be happy to provide them with a copy. With respect to Attorney Dunham's comments about the speed of this process, Mr. Doherty noted that the sequence of events is that the City adopted the Tax Increment Financing District in February and the Enterprise Zone has been in place since 1990 so there have been things in place for a quite a long time. He noted that negotiations have been ongoing with the property owners since January 2004. Mayor Cole noted that the Council adopted a resolution on the feasibility study for the redevelopment district plan in July 8, 2003; the plan was put on display on December 3, 2003; on December 17 a letter was mailed to all taxing bodies; on December 18th a letter was sent to everyone on the interested parties registry and all residential addresses within 750 feet of the district; on January 6th there was a meeting of the Joint Review Board comprised of representatives of all of the taxing districts; January 20th was the second meeting of the Joint Review Board; on January 22nd certified

letters were sent to property owners within the district and regular letters were mailed to all residential addresses within the District at which time the owners of the subject property did sign acknowledging receipt of the certified letter; on February 3rd a public hearing was held before the City Council on the redevelopment proposal and on February 17th an ordinance was approved for the redevelopment district. Mayor Cole addressed Attorney Dunham's comments regarding the rapid pace of this process, noting that it is his understanding that negotiations have been going on between the developer and the owner of the subject property since February, at least since approval of the ordinance creating the district. Mayor Cole added that an offer was made from the private developer to the property owner that was rejected, a second offer was made that was rejected and a third offer which did not include the purchase of the improved property, the house, was made and was not accepted, either. The Mayor said that on March 25th the property owners provided a handwritten offer to sell the property at a price twice what had been offered by the developer and at that time negotiations concluded. Mayor Cole also said there has been some discussion about contact and attempts to contact the property owner to have dialog on this matter, whether or not notice has been given, and whether or not there has been an attempt to negotiate this prior to reaching this point. Mayor Cole noted that a certified letter mailed to the property owner on January 22nd was received and signed for by the property owner. Mayor Cole also referred to his cell phone log, which documents that during the month of April he attempted to contact the property owner. The log documents calls to the property owner on April 1st at 4:22 p.m., April 1st at 7:00 p.m., April 5th at 1:53 p.m. and April 5th at 8:08 p.m.. He said that none of the four calls were answered, nor were they returned. He said he wanted to provide this information in documentation of attempts made to contact and negotiate with the subject property owner.

Mr. Robert Irvin, 303 Oakwood Drive, Carterville, introduced himself as the property owner. He said that they did receive an offer and did reject it, adding that they were not even considering selling the property. He said a second offer was made and again they said they were not interested in selling it and were not interested in the offer. They were encouraged to make a counteroffer, which they did. The interested party rejected their offer. They did not get a third offer, but were asked if they would consider selling the vacant lot and part of the lot behind the house at 307 E. Walnut. Their response was no, adding that although they could sell the vacant lot they could not sell part of the land behind the house. If they develop an office there like they planned, they would have to come in off of Walnut Street. However, there is not enough room to have an exit back on to Walnut Street so they would have to go out the back. Mr. Irvin said in 1998 they appeared before the City Council because there was consideration being given to closing the alley behind the property. At that time, the Irvins requested that the alley not be closed because when they develop their office and have parking behind the house they have to have a way to get out. So the Council did not close the alley so they could have a way of getting out once the office was developed. Mr. Irvin also said this is why they rejected selling part of the land behind the house. Mr. Irvin said that this week when they spoke with City Manager Doherty, he made a proposal that they consider something else that would allow them to go ahead and develop the office and still be able to get out of the parking area behind the house. They are now

considering that. Mr. Irvin said that with respect to the phone calls from the Mayor, they were out of town. They did get one message on the answering machine but the others that the Mayor mentioned he made they did not receive on the answering machine. He said he doesn't know what happened with their recorder, but they did not get four phone calls.

Mr. Cornelius Crane, 1376 Cedar Creek Road, said that on a little more abstract level he would like to know what the checks and balances of the ordinance are. He said for some weird reason it does not seem like America that a government can take a private property owner's land when they don't want to sell it and sell it to someone else just so they can make money. Mr. Crane asked if there are checks and balances in this ordinance to see that people aren't having their land stolen from them. He said he likes development and believes the community needs to be developed, but if a person doesn't want to sell their land why does government have the right to steal it from them and sell it to someone else. Mayor Cole noted that the ordinance does not authorize "stealing". Mr. Crane said that he understands that the offer from the City was less than the offer from the business and that doesn't sound right. City Manager Doherty responded that the offer is based on an independent appraisal by an appraiser who had no knowledge of any other negotiations ongoing. It was an independent opinion of the value of the property. He said that in terms of Mr. Crane's comments which are philosophical in nature, they must be accepted as that. Mr. Doherty said that both the statutes and case law clearly provide that redevelopment projects are in the public's best interest in areas that are termed to be blighted and, in this case, the redevelopment district, TIF district, has included this area as a blighted area. In addition, the enterprise zone has been in existence for fourteen years in this location and has failed to be the incentive needed to provide for redevelopment. So in creating the TIF district and in receiving a proposal for a redevelopment project in this location, the City is legally within its authority to assist in the acquisition of properties for that redevelopment project.

Mayor Cole said that since there was some question about the appraisal, he should note that the first offer from the developer for the purchase was \$110,000 for two properties--the subject property which includes a vacant lot and another lot with a home on it. The second offer was \$125,000. The independent appraisal was for \$119,500. The proposal from the property owner was for \$250,000.

Mayor Cole invited comments or questions from Council members.

Councilwoman Simon asked Attorney Dunham if his clients were interested in continuing negotiations. Dunham said they were. Ms. Simon asked if his clients had been able to obtain their own appraisal. Dunham said they had not. Ms. Simon said, then, that the independent appraisal that was done would not have included information about income generated and expenses at the subject property. Attorney Dunham agreed. In response to Councilwoman Simon's inquiry, Attorney Dunham indicated that he had represented the Irvins for about 24 hours and that although eminent domain is not his area of expertise, he has had quick take experience and appealed a case to the 5th District. He also noted that the Irvins' son is a former student of his and is a very good lawyer.

Mayor Cole noted that he had failed to mention earlier that one of the offers from the developer for the subject property was to replace the subject property, in essence to trade, to purchase other properties of greater value that would produce income similar to or beyond what is being produced by the rental property as it is today.

City Manager Doherty clarified that at the April 20th Council meeting, the Council authorized the use of eminent domain to acquire the properties in question while understanding that negotiations would be initiated and would continue in good faith. The ordinance tonight authorizes quick take in addition to eminent domain authority, which would allow the City to petition the court for immediate possession rather than waiting for the lengthy condemnation proceedings that often occur in a process like this. So there will be time for the acquisition of appraisals. He asked that it be kept in perspective that the authorization for condemnation has already been approved by the Council.

Councilman Wissmann indicated that he wished to clarify some things for the public. He said when eminent domain is filed, the City is not *taking* property and still has to pay for it. City Manager said correct. Mr. Wissmann asked if quick take allows the City to take possession of the property before it is paid for. City Manager Doherty said quick take allows the City to take possession of the property prior to the final price being determined by the Court. Mr. Wissmann said that the City must put money into escrow or another account where it would be on reserve for the time when the court determines the value of the property. City Manager Doherty agreed. Mr. Wissmann asked if the City says the property is worth \$100,000, the property owners says its worth \$200,000 and the court agrees with the property owner, the property owner would receive the full \$200,000. City Manager Doherty agreed. Councilman Wissmann reiterated that the City is not taking property from anybody and if this issue does go to court and the judge decides that the property is worth what the property owners say it is worth, the property owners will receive what they wanted. He added that they may get less depending on what the court decides, but the City will not be taking property from anybody. The property will then be sold to a developer for redevelopment. City Manager Doherty agreed.

Councilwoman Flanagan asked how many property owners were involved in this area. City Manager Doherty said that there are two property owners involved. All the housing units involved are rental units and the tenants will be relocated. Mayor Cole added that one of the members of the Joint Review Board was a resident of the TIF district and resided in one of the properties in that block. As the representative of the residents of the district, on the Joint Review Board he voted in favor of presenting the district to the Council. Councilwoman Flanagan asked if the property owners were given an offer by the private developer to not only buy the property but the developer would also provide them with another property of equal or better value for replacement. Mayor Cole agreed.

Councilwoman Simon said that she supports where the City proposes to go with this development, adding that it makes a lot of sense for the City and is the obvious intended use of the TIF district. She said that it will serve the public well in the end, especially in the immediate area. She noted that her only objection is a question of timing and making sure that the City Council does the right thing at the right time.

MAIN MOTION: that the Council adopt an Ordinance authorizing the City of the Carbondale to acquire certain property within the Enterprise Zone through the use of Quick Take Eminent Domain.

MOTION: S. Simon moved, L. Jack seconded, that the Council table this matter to the next meeting. VOTE ON MOTION TO TABLE: Ayes: M. Flanagan, S. Haynes, L. Jack and S. Simon. Nays: C. McDaniel, C. Wissmann and B. Cole. Motion declared carried.

7. Council Comments

There were no Council comments.

8. Adjournment

There being no further business to come before the City Council, the meeting was declared adjourned at 9:09 p.m..

Janet M. Vaught, City Clerk

Approved by the City Council on:
