

ANDREW J. GUENTHER JR.

*Complainant,*

v.

BLOOMINGTON PLAN COMMISSION

*Respondent.*

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Formal Complaint

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Luke H. Britt

Public Access Counselor

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## **Facts of the situation**

The complainant, Andrew J. Guenther Jr., is currently a contested member of the Bloomington Plan Commission, pending a ruling from the Indiana Court of Appeals. As a result of his status as a contested member, Mr. Guenther has been put on an email list-serv for Bloomington Plan Commission members/Bloomington Planning & Transportation staff. This email list-serv's sole purpose, thus far, has been to announce meetings of the Bloomington Plan Commission and pass along materials/meeting Zoom links for/to those same meetings.

On Monday, February 7th, 2022 at 12:20 PM, the complainant received an email from Eric Greulich, a case manager for the Bloomington Planning & Transportation Department. The email declared a lunch meeting of the Bloomington Plan Commission, to be held on Tuesday, February 8th, 2022 at 11:30 AM. This email (see Exhibit A) also included topographical maps of two proposed site plans, an agenda containing 5 items for discussion, and a Zoom link to the meeting.

This email/meeting notification was sent to 4 employees of Bloomington Planning & Transportation Department, 1 employee of the Bloomington Legal Department, the Deputy Mayor of Bloomington, and every member of the Bloomington Plan Commission except the newly elected City Council Appointee (who is Councilmember Ron Smith) (see Exhibit B).

Upon receiving this email, the complainant attempted to locate the public notice of the meeting, both online via the City's website, and in-person via the bulletin boards provided at City Hall for such postings. The complainant could not locate a public notice in either location.

The next day, February 8th, 2022, the complainant received an email at 11:34 AM from Jacqueline Scanlan, a case manager with the Bloomington Planning & Transportation Department (see Exhibit C). This email stated that the City was having issues with the Zoom link, but that they will get the meeting up and running shortly. That same day, at 11:38 AM, Jacqueline Scanlan sent another email out to all recipients with a new Zoom link (see Exhibit D). Due to a lack of public notice, the new Zoom link was apparently not published for the public to access. Due to a stay issued by the trial court on his appointment, the complainant did not attend the meeting in question.

On February 16th, 2022, the complainant filed a Public Records Request (PRR) with the City of Bloomington via an email to the City Legal Department (See Exhibits E & F). The complainant requested the following items/records to be produced:

1. Minutes or memorandum summarizing the meeting, if they exist, of the Bloomington Plan Commission lunch meeting held on Tuesday, February 8, 2022.
2. The audio/video recording, if it exists, of the Bloomington Plan Commission lunch meeting held on Tuesday, February 8, 2022.
3. A copy of the public notice, if it exists, for the Bloomington Plan Commission lunch meeting held on Tuesday, February 8, 2022.
4. A list of attendees, if it exists, of the Bloomington Plan Commission lunch meeting held on Tuesday, February 8, 2022.

The City of Bloomington Legal Department replied via email to the PRR on February 17th, 2022, stating they would be back in contact “in a reasonable amount of time” (see Exhibit G). On February 18th, 2022, the City of Bloomington added the March 2022 lunch meeting of the Bloomington Plan Commission to the City’s online calendar as a Bloomington Plan Commission Work Session, to be held on Tuesday, March 15, 2022 from 11:30-12:30 PM (see Exhibits H, I, & J). It appears that the online calendar has never before been used to record/schedule a Bloomington Plan Commission lunch meeting (or Work Session).

As of March 4th, 2022 at close of business, complainant had yet to receive any notice from the City of Bloomington regarding the PRR aside from the aforementioned correspondence.

### **Allegations against the City of Bloomington**

The complainant alleges the following to be true of the situation described above & herein:

1. As of March 4th, 2022, the City of Bloomington has yet to produce the records requested in the Public Records Request filed on February 16th, 2022.
2. A delay of this length for a Public Records Request can be scrutinized as a *de facto* denial of the request.
3. On information and belief, the City of Bloomington has yet to produce the requested public records because they do not exist, including the requested public notice of the Tuesday, February 8th, 2022 lunch meeting of the Bloomington Plan Commission.

4. On information and belief, the Bloomington Plan Commission lunch meeting was convened on Tuesday, February 8th, 2022 shortly after 11:30 AM with a set agenda.
5. On information and belief, the lunch meeting of the Bloomington Plan Commission on Tuesday, February 8th, 2022 was held with a quorum of the Bloomington Plan Commission members present.
6. On information and belief, information regarding upcoming petitions before the Bloomington Plan Commission was conveyed at this meeting to Bloomington Plan Commission members via the 4 present employees of Bloomington's Planning & Transportation Department - Eric Greulich, Jacqueline Scanlan, Scott Robinson, and Karina Pazos.
7. Receiving information is an "official act" under the Open Door Law (ODL).
8. On information and belief, the City of Bloomington Legal Department was aware of this meeting via their employee, Mike Rouker, who was included in the email in his capacity as City Attorney.
9. On information and belief, the Office of the Mayor of Bloomington was aware of this meeting via their employee, Don Griffin, who was included in the email in his capacity as Deputy Mayor.
10. On information and belief, the Bloomington Plan Commission has assembled for a lunch meeting on the first Tuesday following their regular monthly meeting each month for at least the past 4 years, and has not posted public notice for those meetings, constituting dozens of violations of the ODL.

### **Request of Public Access Counselor**

The complainant respectfully requests that the Public Access Counselor finds that the Bloomington Plan Commission has violated the ODL on each occasion of a "lunch meeting" for at least the past four (4) years, due to the Plan Commission's failure to provide public notice for said "lunch meetings" under Indiana's ODL.

# Exhibits



Andrew Guenther <ajguentherjr@gmail.com>

## Plan Commission lunch session, Tuesday February 8, 2022

Eric Greulich <greulice@bloomington.in.gov> Mon, Feb 7, 2022 at 12:20 PM  
To: Trohn Endright-Randolph <tenright@co.monroe.in.us>, Andrew Cibor <andrew.cibor@bloomington.in.gov>, Eric Greulich <greulice@bloomington.in.gov>, Jillian Kinzie <jkinzie@indiana.edu>, Jacqueline Scanlan <scanlanj@bloomington.in.gov>, Don Griffin <don.griffin@bloomington.in.gov>, Karin St John <kstjohn@stjohnjobs.com>, Mike Rouker <roukerm@bloomington.in.gov>, Israel Herrera <herrera@indiana.edu>, Flavia Burrell <flavia.burrell@homelinder.org>, Karina Pazos <karina.pazos@bloomington.in.gov>, Andrew Guenther <ajguentherjr@gmail.com>, Scott Robinson <robinso@bloomington.in.gov>, Brad Wisler <brad@bradwisler.com>, Chris Cockerham <chris@cockerham.us>, Timothy Ballard <limothymichaelballard@gmail.com>

Ivy Chase DRC.pdf

Greetings all-

We will have 5

Arlington DRC packet.pdf

things on the agenda for tomorrow's PC lunch meeting at 11:30. This will be through zoom at the following link-

<https://bloomington.zoom.us/j/82112833256?pwd=ZlplWURNREswOUg5bXhYSmY4NUZPd09>

Meeting ID: 821 1283 3256

Passcode: 848307

**Arlington Multifamily**  
1215-1414 W Arlington Road  
7 acres  
Zoning: Residential Multifamily (RM)  
Request: Major Site Plan approval  
Planner: Eric Greulich

The properties contain a mix of single family residences. There are several scattered trees around the center of the site, but no known sensitive environmental features. The property drains from north to south with approximately 65' of fall across the property. The petitioner is proposing to remove the existing structures and construct a new multi-family building with 211 dwelling units and 269 bedrooms (89 1-BR, 116 2-BR, 6 3-BR). Parking will be provided through a mix of 262 surface parking spaces and 42 spaces within the building for a total of 304 spaces. This will include 11 electric vehicle parking spaces. There will be one driveway on the north side of the site and one on the south side, these will need to be 100' from the adjacent drives. Arlington Road is classified as a Neighborhood Connector with 74' of proposed right-of-way and requires a 7' sidewalk and 5' tree plot along this property frontage. Since there are single family residences to the north, a Type 1 buffer yard is required along the north property line and adds another 10' onto the setback requirements and requires one deciduous tree every 30 feet.

**Ivy Chase**

3111 S Walnut Street Pike  
16.16 Acres  
Zoning: Residential Medium Lot (R2)  
Request: Primary plat approval  
Planner: Eric Greulich

This is a request to subdivide a 16 acres property into 37 single family lots. This property received subdivision approval in 2007 and recorded one phase of the development, however the preliminary plat has expired and they must reapprove a primary plat to allow for successive phases to be recorded. They will be requesting to vacate the previously recorded phase and plat the entire property. There are several sinkholes on the property that will be set aside in common area lots as well as a large common area lot for tree preservation. Walnut Street Pike requires 74' of right-of-way so they will be dedicating 37' from centerline. A multi-use path is called out along Walnut Street Pike and the petitioner is showing an 8' wide path along this frontage.

**Trades District Technology Center**  
SW corner of Maker Way and Madison Street  
~.37 acres  
Zoning: Mixed-Use Downtown Showers Technology Downtown Character Overlay  
Request: Major Site Plan  
Case Manager: Jackie Scanlan

The Redevelopment Commission is requesting a major site plan approval for one 21,000 gross floor area building at the southwest corner of Maker and Madison. The building will be used for office space, and requires and plans no on-site parking.

Potential issues include building materials, the plaza at the northeast of the building and front building setbacks, and minimum landscape area. In addition, the 'lot' desired for this use has yet to be subdivided.

**3000 & 3070 S Walnut St**  
5.33 Acres  
Zoning: Mixed-Use Corridor (MC)  
Request: Major site plan approval  
Case Manager: Karina Pazos

The site currently contains a fitness center on the western portion of the 3070 S Walnut parcel and is vacant on the 3000 S Walnut parcel. The petitioner is requesting a major site plan approval to construct a 9-building self-storage facility with 10 new vehicle parking spaces. Access to the storage facility and fitness center will be shared. There is a Riparian Buffer along the south sides of each parcel.

**613 E 12th St**  
0.20 Acres  
Zoning: Mixed-Use Medium Scale (MM)  
Request: Major site plan approval

<https://mail.google.com/mail/u/0/?ik=c7712be9ef&view=pt&search=all&permmsgid=msg-f%3A1724125742007307965&simpl=msg-f%3A1724125742007307965> 1/2

## Exhibit A - Bloomington Plan Commission February 2022 Lunch Meeting Email (1/2)

2/20/22, 10:04 AM




Gmail - Plan Commission lunch session, Tuesday February 8, 2022

Case Manager: Karina Pazos

The site was approved per Demo Delay 21-11. The petitioner is requesting a major site plan approval to construct a 4-story building with 3 floors of residential units over a ground floor parking garage with 8 vehicle parking spaces and 2 bicycle parking spaces. There will be 18 dwelling units consisting of 18 studio apartments. Access to the garage is proposed from the alley along on the north side of the property.

Eric Greulich  
Senior Zoning Planner  
City of Bloomington Planning and Transportation Department  
812-349-3526

3 attachments

-  Trades\_District\_TC\_DRC\_Packet\_reduced.pdf  
17621K
-  613 E 12th St (1).pdf  
2258K
-  3000 & 3070 S Walnut (1).pdf  
4335K

*Exhibit A - Bloomington Plan Commission February 2022 Lunch Meeting Email (2/2)*

 Feb 7, 2022, 12:20 PM (13 days ago)   

from: **Eric Greulich** <greulice@bloomington.in.gov>  
to: Trohn Endright-Randolph <tenright@co.monroe.in.us>, Andrew Cibor <andrew.cibor@bloomington.in.gov>, Eric Greulich <greulice@bloomington.in.gov>, Jillian Kinzie <jikinzie@indiana.edu>, Jacqueline Scanlan <scanlanj@bloomington.in.gov>, Don Griffin <don.griffin@bloomington.in.gov>, Karin St John <kstjohn@stjohnjobs.com>, Mike Rouker <roukerm@bloomington.in.gov>, Israel Herrera <herrerai@indiana.edu>, Flavia Burrell <flavia.burrell@homefinder.org>, Karina Pazos <karina.pazos@bloomington.in.gov>, Andrew Guenther <ajguentherjr@gmail.com>, Scott Robinson <robinsos@bloomington.in.gov>, Brad Wisler <brad@bradwisler.com>, Chris Cockerham <chris@cockerham.us>, Timothy Ballard <timothymichaelballard@gmail.com>

*Exhibit B - Bloomington Plan Commission February 2022 Lunch Meeting Email Recipients*



Andrew Guenther <ajguentherjr@gmail.com>

**Plan Commission lunch session, Tuesday February 8, 2022**

Jacqueline Scanlan <scanlanj@bloomington.in.gov> Tue, Feb 8, 2022 at 11:34 AM  
To: Eric Greulich <greulice@bloomington.in.gov>  
Cc: Trohn Endright-Randolph <tenright@co.monroe.in.us>, Andrew Cibor <andrew.cibor@bloomington.in.gov>, Jillian Kinzie <jjkinzie@indiana.edu>, Don Griffin <don.griffin@bloomington.in.gov>, Karin St John <kstjohn@stjohnjobs.com>, Mike Rouker <roukerm@bloomington.in.gov>, Israel Herrera <herrera@indiana.edu>, Flavia Burrell <flavia.burrell@homefinder.org>, Karina Pazos <karina.pazos@bloomington.in.gov>, Andrew Guenther <ajguentherjr@gmail.com>, Scott Robinson <robinson@bloomington.in.gov>, Brad Wisler <brad@bradwisler.com>, Chris Cockerham <chris@cockerham.us>, Timothy Ballard <timothymichaelballard@gmail.com>

All, We are having some issues with Zoom, but hope to have the meeting up and running shortly!

Thanks for your patience,  
Jackie  
[Quoted text hidden]

*Exhibit C - Bloomington Plan Commission February 2022 Lunch Meeting Follow-Up Email 1*



Andrew Guenther <ajguentherjr@gmail.com>

**Plan Commission lunch session, Tuesday February 8, 2022**

Jacqueline Scanlan <scanlanj@bloomington.in.gov> Tue, Feb 8, 2022 at 11:38 AM  
To: Eric Greulich <greulice@bloomington.in.gov>  
Cc: Trohn Endright-Randolph <tenright@co.monroe.in.us>, Andrew Cibor <andrew.cibor@bloomington.in.gov>, Jillian Kinzie <jjkinzie@indiana.edu>, Don Griffin <don.griffin@bloomington.in.gov>, Karin St John <kstjohn@stjohnjobs.com>, Mike Rouker <roukerm@bloomington.in.gov>, Israel Herrera <herrera@indiana.edu>, Flavia Burrell <flavia.burrell@homefinder.org>, Karina Pazos <karina.pazos@bloomington.in.gov>, Andrew Guenther <ajguentherjr@gmail.com>, Scott Robinson <robinson@bloomington.in.gov>, Brad Wisler <brad@bradwisler.com>, Chris Cockerham <chris@cockerham.us>, Timothy Ballard <timothymichaelballard@gmail.com>

Please try this link instead:

Join Zoom Meeting  
<https://bloomington.zoom.us/j/88248827942?pwd=aTNOSGJSQ0ViQUhMmw3cjFCZEpldz09>

Meeting ID: 882 4882 7942  
Passcode: 623151  
One tap mobile  
+13126266799,,88248827942# US (Chicago)  
+19292056099,,88248827942# US (New York)

Dial by your location  
+1 312 626 6799 US (Chicago)  
+1 929 205 6099 US (New York)  
+1 301 715 8592 US (Washington DC)  
+1 346 248 7799 US (Houston)  
+1 669 900 6833 US (San Jose)  
+1 253 215 8782 US (Tacoma)

Meeting ID: 882 4882 7942  
Find your local number: <https://bloomington.zoom.us/u/kjfk0XFpR>  
[Quoted text hidden]

*Exhibit D - Bloomington Plan Commission February 2022 Lunch Meeting Follow-Up Email 2*





**City of Bloomington Legal Department**  
 401 N. Morton St. Ste 220  
 Bloomington, IN 47404  
 Phone: 812-349-3426 Fax: 812-349-3441  
 Email: [legal@bloomington.in.gov](mailto:legal@bloomington.in.gov)

**Request for Public Records**

Please print or type:

Name of Person Requesting Records: Andrew Guenther  
 Address: 611 W Slate Drive, APT D, Bloomington, IN 47404  
 e-mail: ajguentherjr@gmail.com  
 phone: 812-345-8250 fax: \_\_\_\_\_

Records Requested: Please, be specific. (You may include additional pages or documents.)

- 1) Minutes or memorandum summarizing the meeting, if they exist, of the Bloomington Plan Commission lunch meeting held on Tuesday, February 8, 2022.
- 2) The audio/video recording, if it exists, of the Bloomington Plan Commission lunch meeting held on Tuesday, February 8, 2022.
- 3) A copy of the public notice, if it exists, for the Bloomington Plan Commission lunch meeting held on Tuesday, February 8, 2022.
- 4) A list of attendees, if it exists, of the Bloomington Plan Commission lunch meeting held on Tuesday, February 8, 2022.

This request is:  for permission to inspect records.  
 to request a copy of records. Please note that there may be a fee for copies.  
 Check here if you want to be told about the fee before copies are made.

Electronically Signed Andrew Guenther 2/16/22  
 Signature Date

**NOTE: Please submit to the City of Bloomington Legal Department, 401 N. Morton, Rm #220, Bloomington, Indiana, fax-812.349.3441 or [legal@bloomington.in.gov](mailto:legal@bloomington.in.gov).** Upon receiving this completed form, the City of Bloomington may need to review its files to determine if the requested records exist and are disclosable and will contact you soon thereafter to advise you of its determination. If your request is denied, you will be given written notice of the statutory authority for the denial and the name and title or position of the person responsible for the denial.

**FOR AGENCY USE ONLY – PLEASE DO NOT WRITE BELOW THIS LINE**

Receipt information:

Date and Time request was received: Date: \_\_\_\_\_ Time: \_\_\_\_\_

Individual and department receiving request: \_\_\_\_\_

Department disposition by Dept. Head or Designee:  request granted  
 request sent to Legal for disclosure review

Individual making department disposition: \_\_\_\_\_

Date and Time request sent to Legal: Date: \_\_\_\_\_ Time: \_\_\_\_\_

Notes:

*Exhibit E - Public Records Request Filed 2/16/2022*



Andrew Guenther <ajguentherjr@gmail.com>

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**Public Records Request - Plan Commission**

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Andrew Guenther <ajguentherjr@gmail.com>  
To: Legal Department <legal@bloomington.in.gov>

Wed, Feb 16, 2022 at 5:31 PM

Hello,

I am respectfully submitting the attached public records request for some items related to the Bloomington Plan Commission.

Please note this is unrelated to my current lawsuit against the City regarding the Plan Commission, which is pending appeal. This is for a different matter entirely.

Best regards,

Andrew Guenther

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 PRR - 2:16:22.pdf  
82K

*Exhibit F - Public Records Request Email*



Andrew Guenther <ajguentherjr@gmail.com>

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**Public Records Request - Plan Commission**

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City of Bloomington Legal Dept. <legal@bloomington.in.gov>  
To: Andrew Guenther <ajguentherjr@gmail.com>

Thu, Feb 17, 2022 at 2:26 PM

Good day to you and thank you for your inquiry.

The City of Bloomington Legal Department received your public records request on 2.16.22.

We are reviewing our records to determine which records, if any, are responsive. We will follow up in a reasonable amount of time regarding our progress.

I have forwarded this to Daniel Dixon who is the attorney assigned to public records requests.

Thank you.

[Quoted text hidden]

*Exhibit G - Public Records Request Email - City Reply*

Plan Commission

Today ◀ ▶ March 2022 ▼ Print Week Month Agenda ⌵

Sun	Mon	Tue	Wed	Thu	Fri	Sat
27	28	Mar 1	2	3	4	5
6				10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31	Apr 1	2

**Plan Commission Work Session** ✕

**When** Tue, March 15, 11:30am – 12:30pm

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[more details»](#) [copy to my calendar»](#)

5:30pm Plan Commission Me 11:30am Plan Commission W

Exhibit H - City Calendar - March 2022 Bloomington Plan Commission Work Session Posting

## Meetings

Mar  
**14**

### **Plan Commission Meeting**

Monday 5:30pm -  
9:00pm

at City Hall

Cityhall Council Chambers (RM  
#115)

[Click to view this Event](#)

Mar  
**15**

### **Plan Commission Work Session**

Tuesday 11:30am -  
12:30pm

Location TBA

[Click to view this Event](#)

*Exhibit I - March 2022 Bloomington Plan Commission Work Session Posting (Alternate View)*

Plan Commission

Today ← → February 2022 Print Week Month Agenda

Sun	Mon	Tue	Wed	Thu	Fri	Sat
30	31	Feb 1	2	3	4	5
6	7 5:30pm Plan Commission	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	Mar 1	2	3	4	5

Exhibit J - February 2022 Bloomington Plan Commission Calendar