**MINUTES OF A REGULAR MEETING**

**URBANA PLAN COMMISSION** **APPROVED**

**DATE:** **February 6, 2003**

**TIME:** **7:30 P.M.**

**PLACE:** **Urbana City Building**
**400 South Vine Street**
**Urbana, IL 61801**

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| **MEMBERS PRESENT:** | Christopher Alix, Laurie Goscha, Michael Pollock, Bernadine Stake, Marilyn Upah-Bant, Don White |
| **MEMBERS EXCUSED:** | Alan Douglas, Lew Hopkins, Randy Kangas |
| **STAFF PRESENT:** | Elizabeth Tyler, CD Director; Tim Ross, Senior Planner; Teri Andel, Secretary |
| **OTHERS PRESENT:** | Cynthia Hoyle, Susan Taylor |

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## 1. CALL TO ORDER, ROLL CALL AND DECLARATION OF QUORUM

The meeting was called to order at 7:34 p.m., the roll call was taken, and a quorum was declared.

## 2. CHANGES TO THE AGENDA

There was an amended agenda handed out prior to the meeting, which reflected the addition of the case under "Continued Public Hearings" regarding Christ Unity Church.

## 3. APPROVAL OF MINUTES

The minutes from the Plan Commission meeting held on January 23, 2003 will be presented for approval at the next regularly scheduled meeting.

## 4. COMMUNICATIONS

- Letter from William Volk, Director, Champaign-Urbana Mass Transit District, regarding Plan Case #1849-T-03.

## 5. CONTINUED PUBLIC HEARINGS

**Plan Case #1848-SU-02: Request by Christ Unity Church for a Special Use Permit to establish a church at the southwest corner of Interstate 74 and Route 130 (High Cross Road) in the City's R-2, Single-Family Residential Zoning District.**

This case was continued to the Plan Commission meeting on Thursday, February 20, 2003.

## 6. NEW PUBLIC HEARINGS

**Plan Case #1849-T-03: An amendment to the text of the Urbana Zoning Ordinance to amend Table VI-1: Development Regulations by District for the CCD, Campus Commercial District as it relates to the open space ratio requirement.**

Tim Ross, Senior Planner, introduced the case by saying that the proposed text amendment would do three things: 1) require open space only for the residential portion of a development in the CCD District, 2) allow for the first floor of residential uses to be considered the ground floor even if it was above another floor of another type of use, and 3) that the requirement that considers open space to be 50% permeable would not apply in the CCD District. He gave a brief background and explained that the CCD District was created to serve as a rather dense and urban style development in the area of east campus. It was designed to have both residential and commercial uses to enhance that neighborhood. He talked about how the CCD District related to the B-3U and about how they differentiated. The development regulations for the CCD District are generally similar to those of the B-3U; however, the B-3U District consists primarily of apartments near the University and has greater setback requirements.

Mr. Ross discussed the preliminary proposal for a development known as the East Campus Commercial Center to be located in the CCD District. As staff reviewed the initial plans for the development, it was determined that the minimum open space ratio required for the CCD District would likely be too high for the typical development that was intended to be used in the CCD District. He briefly described the plans for the East Campus Commercial Center. He explained how the open space was figured, which is a ratio between the open space on the lot to the floor area of the building. He mentioned some of the benefits of open space.

Mr. Ross summarized staff findings and read the options of the Plan Commission. He presented the staff recommendation, which was as follows:

> *Based on the evidence presented in the written staff report, staff recommended that the Plan Commission forward this case to the Urbana City Council with a recommendation for approval.*

Mr. Alix asked for clarification on the interaction between floor area ratio and open space ratio. Mr. Ross responded that open space ratio is the ratio of the open space to the floor area. A floor area of one could mean hypothetically a building that covered the entire lot or it could cover half the lot and be two stories. Floor area ratio considers the amount of area within the building.

Elizabeth Tyler, Director of Community Development Services, noted that there were good graphics in the Zoning Ordinance that help illustrate what each are. She passed around the page with the graphics from the Zoning Ordinance.

Mr. Alix inquired that if someone built a commercial only building, then no open space would be required in the CCD District? Mr. Ross replied that was correct. The open space requirement only applies to the residential portions of buildings in the CCD District.

Mr. Alix commented that it seemed to him that the floor area ratio was much more restrictive than the open space ratio. He inquired if parking would be considered part of an open space area. Mr. Ross stated that for an area to be considered an open space it needs to be at least 15 feet on either dimension. In a general and/or any other zoning district, it needs to be at least 50% permeable. It cannot be used for parking. Mr. Alix stated that it sounds like the open space requirement requires actual green space or non-permeable space. He asked if the floor area requirement require any open space? Ms. Tyler answered that the floor area is just the built area. Any area that is grassed or a surface parking lot does not apply against that. By adjusting the floor area ratio (FAR) and without making a similar urban adjustment in the open space ratio, the requirement became burdensome in actually trying to create a project that met the goals of the CCD District. The denser it got, the more open space was required. The reason for this is that the open space ratio has floor area as the denominator. Therefore, the higher the floor area, then the higher the required open space would be. It works well on smaller scale projects particularly when there is a setback. However, for an urban project, which is commercial in nature, it is not an effective regulation.

Mr. Alix noted that for anything having a significant portion of commercial space with regard to residential space, it would appear that the floor area ratio would be low and not impose much of a restriction at all. Ms. Tyler replied that it would depend on how many stories there were. Mr. Alix was concerned with the fact that it only applies to residential uses and the fact that 10 percent seemed as equally arbitrarily smaller number than before. It makes him wonder if there was not another type of building that would like to be seen in the CCD District that had not been thought of and would not meet these requirements. Based on his understanding of what the zone is for, he was not sure why there was an open space ratio requirement at all. Ms. Tyler commented that staff and the University of Illinois were looking for something midway between what seemed to work in reality versus what was originally in the amendment.

Ms. Stake remembered that when the open space ratio to the floor area was first developed, it was to protect people from tall buildings and to prevent a tall building being developed next to a low building. She was concerned about having no requirement if there was no residential. Would that keep from having residential? It is very good to have residential in a business area. Mr. Ross stated that this was designed to be dense, urban style development. We are likely to see several-story buildings on this property. The setback requirements are designed to protect and to buffer neighboring properties from other buildings. Generally in the CCD District, the City does want to have the most density possible and still provide open space if there is a residential component. Under the proposed text amendment, staff felt that this would be the appropriate balance where developers would be able to provide some level of open space when there is a residential component in a project.

Ms. Stake asked if there would only be 5 feet on each side for setback requirements? Mr. Ross replied that the minimum required setbacks for the rear and sides would be 5 feet and 6 feet for the front.

Ms. Stake suggested having some amenities in the building for example, a skylight or a garden. Mr. Ross replied that it would be on top of the building or in front of the building. Ms. Stake asked if all of these would be considered a special use? Ms. Tyler replied that everything except a university or college related use would require a special use permit. Even the residential portion would be considered a special use. There is a lot of opportunity to make sure that any project that comes into a CCD District fits the vision of being a nice urban scale project with amenities.

Ms. Upah-Bant inquired as to what the boundaries were for the CCD District? Mr. Ross responded that there had been a request to rezone some property to CCD. The case went before City Council, and it was tabled pending further information. Therefore, there currently are no properties with a CCD zoning. Ms. Tyler added that the Plan Commission had recommend approval of the rezoning. The proposed area is on Gregory Street just south of Oregon Street. When the CCD Zoning District was established, generally the east campus area was the intent.

Ms. Upah-Bant inquired as to why the City Council tabled the case? Ms. Tyler replied that City Council questioned the following: *Because the area proposed in that case was owned by the University of Illinois, but was a private development, what could the City of Urbana and the University of Illinois do to make it as taxable as any other private development?* This concern has taken a lot of legal research and property research. It has also taken some action by the Board of Trustees at the University of Illinois. City staff was hoping to be able to bring that case back before the Plan Commission as a special use permit soon.

Ms. Upah-Bant commented that this was a text amendment for a zoning classification in which the City does not have any property zoned as such. She asked that in the proposed Comprehensive Plan, if staff saw any other areas that could be zoned as a CCD Zoning District? Mr. Ross replied that in the Comprehensive Plan, the City was not likely to have a classification specific to a zoning district. This type of mixed-use development was intended to be in the East Campus area. It will be a limited zoning district to a rather small area. Ms. Tyler added that there might be some opportunities in the North Campus area in which this zone might work.

Ms. Stake inquired if staff had any information from other cities that had worked with this kind of problem. Ms. Tyler responded that this project was unique. She noted that it was a relic that the City of Urbana had lost so much property to the University of Illinois for commercial uses. This is was a compromise, in a way, to realize some private development near campus that meets campus needs in terms of housing and commercial uses that fit on campus. Some of the other university towns might have had similar situations. She did not know if any of them created a special zone to achieve that.

Mr. Pollock restated that the setbacks are 5 feet for the sides and rear and 6 feet for the front. As such, they would not fit any open space requirements, because they would need to be 15 feet

minimum. Mr. Ross replied that was correct. Mr. Pollock asked if part of this proposed text amendment was to allow skylight cafes, rooftop terraces, or the like to be used to fulfill a modest open space requirement, was there anywhere that the types of things that would be acceptable were defined? Mr. Ross responded that as of now, there was not any language in the text amendment to define the types of uses that would be acceptable. It would be up to the Zoning Administrator to look at the definition of "open space" and apply that to the requested use. Mr. Pollock questioned whether it would be a matter of a developer bringing a project before the Plan Commission and City Council to decide whether or not it fits? Ms. Tyler stated that the open space ratio only applies to the residential portion. She noted that the same definition of open space would be used for the CCD Zoning District where applicable. Mr. Ross added that all uses except university or college related uses would need special use permits and would come before the Plan Commission and the City Council. Mr. Pollock asked if those definitions did not belong in the definition of that particular district? It would be a project-by-project review? Mr. Ross replied that was correct at this point. The Zoning Administrator would make an interpretation of what the open space would be and whether or not it met the requirement. It would then be presented before the Plan Commission to review it to determine whether additional open space would be necessary for approval of the special use permit.

Mr. White moved that the Plan Commission forward this case with a recommendation of approval to the Urbana City Council as recommended. Ms. Stake seconded the motion. The roll call was as follows:

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| Ms. Goscha | - | Yes | Mr. Pollock | - | Yes |
| Ms. Stake | - | Yes | Ms. Upah-Bant | - | Yes |
| Mr. White | - | Yes | Mr. Alix | - | Yes |

The motion was passed by unanimous vote.

**Plan Case #1850-T-03: An amendment to the text of the Urbana Zoning Ordinance to amend Article X, Nonconformities, to add a new Section X-10, regarding nonconformities that are created through government acquisition by eminent domain or under threat of eminent domain.**

Ms. Tyler gave the staff presentation regarding this case. She began by saying that she would review the currently proposed text and would like some feedback. She knew that the City Attorney was continuing his review and had made some suggestions to possibly streamline it with the same effect. She would like to be able to bring this text amendment back before the Plan Commission at the next meeting in revised form. Over the last year to 18 months, the City has been undertaking some roadway improvements. One example was some of the new roads around the new Farm & Fleet and another example was North Lincoln Avenue, which was being straightened out and would provide access to a waste transfer facility that was being proposed in that area.

What has occurred in these two examples is that the acquisition of right-of-way would lead to zoning nonconformities through no fault, wish, or desire of the owners of those facilities. It has created a problem for the owners, and they feel uncomfortable about the right-of-way

acquisition. They would not lose their businesses, but the businesses would then become nonconforming. One was a setback example in which previous to construction of a new road, there was sufficient setback. Now that the new road is complete, although there is a setback, it does not meet the requirement. The other example is a construction yard use that was already nonconforming but needs to move. It can be relocated to make way for the road. By relocating, the construction company loses their legal nonconforming right. They would no longer be able to operate. They would be happy to move and to cooperate, but not at the expense of their zoning rights. The proposed text amendment would be a new way to create a category of nonconformities that has a little greater recognition as a legal nonconforming use and has a little more leeway in how long the nonconformity remain or the conditions under which that use might get permission to expand or relocate.

Ms. Tyler reviewed the proposed amendment to be added as Section X-10, Nonconformities created through Government Acquisition. She summarized staff findings and read the options of the Plan Commission.

In reference to Letter D of the proposed new section, if someone had a nonconforming use and moved to an adjacent property, Mr. White asked if there was any way that the person could expand the size and scope of that nonconforming use? Ms. Tyler replied that the person could do that under Letter C of the proposed new section through the Zoning Board of Appeals and would have to prove that it would not increase congestion in the streets and would not endanger the health, safety, morals or general welfare of the area to which the use, building or structure is relocated. That person would get a Certificate of Occupancy with the Zoning Board of Appeals approval. This was taken from Section X-3. Change of Nonconforming Use, as it currently exists in the Urbana Zoning Ordinance.

Ms. Stake questioned what would happen if a nonconforming business moves and the owner sells the business? Would the nonconformity go with the business? Ms. Tyler replied that was correct, because the nonconformity goes with the use itself or the building or structure and not the individual owner. The reason is because it is not just the current owner who would be impacted. It would be their ability to sell that property. One of the biggest problems with having nonconformity is that it hinders the sale of the property.

Ms. Stake inquired how nonconformity fits with grandfathering in? Ms. Tyler replied that grandfathering was a colloquial term referring to the same thing.

Ms. Goscha questioned how a residentially zoned property would not be affected by this change. For example, if a property owner lived on a street that needed to be widening, then that might make his/her property nonconforming. She asked if that property owner could build an addition with approval from the Zoning Board of Appeals? Ms. Tyler answered that the current home would not be called nonconforming by the widening of the road. In order to construct an addition to the home in the same area as the nonconformity, the property owner would have to meet the criteria under Section X-3 of the Urbana Zoning Ordinance. It may be difficult in this case for the property owner to build the addition. Letter B in that section only refers to commercial or industrial use. The property owner could build the addition in the rear of the

property. The proposed text amendment was not remedying all circumstances. Perhaps the City Attorney will find a way to do that.

Mr. Alix questioned where the restrictions were for commercial and industrial uses? Ms. Tyler replied the restrictions were listed in Section X-3, B of the Zoning Ordinance, which authorizes the Board of Zoning Appeals to issue a permit for the conversion, structural alteration enlargement of a building, or the construction of new structures, provided that it makes it more compatible and visually less nonconforming. It is a little bit of a loophole. Ordinarily with a nonconforming property, it can be left nonconforming for a very long time; however, the owner cannot add to it. That is a restriction on the property owner's rights. Mr. Alix asked that even though it says under no circumstances is it possible to add on to a residential nonconforming property, is there even a way by which the City could give approval to expand a nonconforming residential use? Ms. Tyler replied that in a way that would extend the nonconformity, she had not seen it in the Zoning Ordinance. Mr. Alix stated that means that the property owner would never be able to expand his/her house, not even in the back. Ms. Tyler stated that the property owner would be able to add on to the back of the house or on the sides. Section X-3.B only applies to the portion of the structure that would be nonconforming, which is usually the front-yard setback.

Mr. Alix stated that in effect, it seemed that this had no impact on the expandability or later modifiability of a use. It just determines whether or not it has to be phased out. Ms. Tyler replied that a phase out does not apply. It is saying that the property would not be nonconforming. There are two levels of remedies for these expansions, which are 1) Zoning Administrator approval for relocation and 2) proving to the Zoning Board of Appeals that the property owner would not impact the surroundings. This may be something to speak to the City Attorney about to the extent of providing better protection for residential uses.

Mr. Alix stated that the proposed Section X-10, C appeared to be redundant with Section X-10, D. He asked if Section X-10, C did not in effect go without saying? Is not everything in the City subject to that anyway? Ms. Tyler responded that Section X-10, C was just confirming a right and requires property owners to go to the Zoning Board of Appeals. It had to be put in the text amendment for Section X-10, D, because that is an exception to that. Mr. Alix stated that the City was in effect saying that a landowner had an option to go to the Zoning Board of Appeals. Whereas in the absence of that provision, a landowner would have no option at all to expand the nonconforming use. Ms. Tyler mentioned that if they were not talking about the government acquisition case, a landowner would still have Section X-2 and Section X-3 to contend with.

Mr. Alix commented that it was not clear to him that the proposed Section X-10, C only applied to government acquisition related properties. He noted that it read as if it would apply to almost any piece of property in the City of Urbana. Ms. Tyler commented that it was in the section for the government acquisition. It should be the special circumstances that would give the Zoning Administrator the ability to allow a business to be relocated. Mr. Alix wondered if Letter C should be worded more like Letter B to read as such: *Any change, substitution, or addition to a use, building or structure which would be rendered nonconforming by reason of government acquisition…*Ms. Tyler stated that the proposed text amendment would come back redrafted by the City Attorney.

Mr. Alix suggested changing the wording from "threat of eminent domain" to "subject to eminent domain" to indicate that the property owners did not actually have to be threatened in order to gain the benefit of the section. Ms. Tyler inquired if the Plan Commission members felt that staff should work on providing and/or clarifying continuation of these rights for residential as well as commercial/industrial. Ms. Goscha commented that the City of Urbana should protect the rights of everyone, not just in commercial and industrial uses. Ms. Stake agreed. She felt that a lot of times, the residential neighborhoods are the ones who are impacted when there is a street widening. Ms. Tyler believed the reason it was not currently in the Zoning Ordinance was because those neighborhoods are most sensitive. Whenever you add to a nonconformity property, it would more likely to impact neighbors.

Ms. Tyler commented that the Plan Commission members have posed very good questions that need more exploration. In trying to draft this, she was trying to operate within a not very well drafted article. Therefore, she would be happy to redraft other sections of the Zoning Ordinance to make it work together better.

Ms. Stake questioned why staff decided not to have limits into perpetuity? Ms. Tyler replied it was because that was viewed as a taking. It hampers the sale of the property.

Mr. White gave a specific situation of where a business of construction and resorting of garbage was operating in a Conservation, Recreation, and Education Zoning District. The only reason it was able to operate in this zoning district was because it was grandfathered in. It was restricted to certain property with boundaries on it. He did not see the ability in Section X-2 of the Urbana Zoning Ordinance, for this certain business to move to an adjacent property and remain nonconforming if they were somehow affected by government acquisition. Ms. Tyler stated that the proposed Section X-10, D would exempt them from Section X-2. Mr. White preferred to see these proposed amendments not apply to properties that are already considered nonconforming. Property owners should not be able to expand an existing nonconforming use to another property using the proposed text amendments when they could not under the original Section X-2 in the Urbana Zoning Ordinance.

Ms. Tyler stated that was the precise case that was before the City. Can an already nonconforming use be relocated immediately adjacent with the same use, same configuration, and no expansion? The nonconforming property is a setback nonconformity. The problem in moving the business would be that the business would lose their nonconforming status. Right now they are located on a 40-foot strip of land, and the setback is 25 feet. They have established legal use of all 40 feet just because they were pre-existing for so many years. If they comply with zoning when they relocate, then they will lose half of their property. The proposed text amendment would provide them some protection if they move immediately adjacent and it meets the test of not increasing congestion, etc. Mr. White felt that was what was wrong with this proposal. When a nonconforming use is able to slide into an adjacent property, then it could impact different people.

Mr. Alix stated that if a business owner is already operating a nonconforming use, and the City comes by and widens the street, by virtue of doing that, if the owner has a remedy other than

being put out of business, then that remedy should be open to him/her. However, he had not envisioned a case like Mr. White had mentioned. By approving this text amendment, would the City of Urbana be enabling this landowner to do a land swap? He wondered if this should not be restricted with some language that implied that such movement should only be to the extent required to recover the usage of the amount of land that was lost. Ms. Tyler added that it should not result in any expansion and should be clarified. Mr. Alix noted that a business should not be allowed to move any farther than is necessary in order to continue operating. He commented that maybe staff should not use the word "adjacent". His suggested wording was as follows: *The Zoning Administrator has the right to allow a business to incorporate an amount of contiguous additional land equivalent to the amount that was lost as a result of the taking into the operation of it.*

Ms. Stake inquired as to whether the business owners could be compensated in a different way rather than moving from nonconformity to more conformity? Ms. Tyler replied that the compensation would be through eminent domain, which is not good for anybody. The business owners would get a fair settlement from the government, which in this case would be the City of Urbana; but they would not get their business back. It could take three or four years, so the project would be delayed. By not allowing flexibility for these nonconformities, there is truly a hardship in going through eminent domain for all parties involved. If there is a way that the City of Urbana could provide zoning protections that are reasonable and limited so that the City could facilitate these processes without undue damage on the neighbors, the City of Urbana, the project, and the property owners, then that would be the goal of the proposed text amendment.

Mr. Pollock stated that if a property owner who is pushed into a situation where they are nonconforming by government acquisition of property and the City adds three feet in the rear portion of the property, then it might not still be conforming. In a case like this, especially where it is not residential and it is commercial/industrial and where there is review by either the Zoning Board of Appeals or the Zoning Administrator, he would want to be flexible in trying to make sure that someone's life was not ruined through no fault of their own. If they have a business and are operating, not bothering anybody, it is possible for them to move to a different place and do the same thing, and it is acceptable to everybody, the City of Urbana should be open to that unless there is a good reason to prevent it.

Mr. Pollock agreed with Mr. Alix about the language usage of "threat of eminent domain". He could easily see where the City might say to someone in a dispute that would go to court that there was no threat of eminent domain, and the property owner may very well say "yes there was". If you actually go to eminent domain and it goes to court, then it is very clear of what has been done. However, in negotiations, especially when things are very sensitive between two parties, one way or another this language would need to be clarified, so that there is no liability for any of the parties involved in discussing what would happen to a parcel or piece of property that was needed for improvement.

In regards to residential, Mr. Pollock was not sure if it should apply. He envisioned the situation where someone lives on a corner and two front yards, and the owner wanted to put an addition on the side of their house, except according the Zoning Ordinance it was really considered to be the front of their house. He commented that there was no difference between abusing a citizen in

their home and abusing a citizen in their business. If the City of Urbana thought there were protections appropriate for industrial and commercial properties, then the same type of protection is appropriate for residential properties. Even if it takes a little more time to draft the language to do so, he felt it was important that the City does this text amendment comprehensively.

Ms. Stake moved to table this case until the next Plan Commission. Ms. Goscha seconded the motion. It was passed by unanimous voice vote.

**7. OLD BUSINESS**

There was none.

**8. NEW BUSINESS**

There was none.

**9. AUDIENCE PARTICIPATION**

There was none.

**10. STAFF REPORT**

Ms. Tyler reported on the following:

- ✓ *Christ Unity Church in Beringer Commons:* Staff is continuing to work on the special use request. They received some information from the City Engineer on the traffic impact. The developer was still out of town. Staff found provisions in the annexation agreement that actually limited that portion of the subdivision to Single-Family Residential use. This would have a limitation on the zoning by the annexation agreement; therefore, the annexation agreement would need to be amended before the special use permit could be granted. Staff will bring the annexation agreement amendment as a new case in front of the continued case. The preliminary plat was revised, where the one large lot was determined to be consistent with the several lots, because it did not change the roadways. The preliminary plat will not be coming back to the Plan Commission. Hopefully, there will have been discussion among the neighbors and the church in meetings outside of the public hearing regarding the access and other concerns expressed during the public hearing for this case.

  Ms. Stake inquired if there was a possibility of a different access? Ms. Tyler commented that it should be studied. Mr. Ross mentioned that it was on the table. It will be presented to the developer, Ivan Richardson, as being a major item of discussion.

- ✓ *B-1, Neighborhood Business Zoning District Amendment:* Staff has done a lot of study at the request of the City Council. As a result of the study, staff came up with some general ideas and presented them at the City Council Committee meeting on Monday, February 3, 2003. This will go back to City Council once more to address concerns to make

neighborhood businesses less impacting on nearby residences. This will come before the Plan Commission in text amendment form in the near future.

- ✓ *Fixed Guideway Study:* She mentioned that Rob Kowalski, Planning Manager, would be presenting a PowerPoint presentation on this at the Monday, February 10, 2003 meeting. She stated that Mr. Kowalski had attended the two field trips, one to Portland, Oregon and the one to the European cities. He took some great pictures and has a really nice package of information.

- ✓ *2003 Planning Institute – "Local Planning Matters":* She mentioned that Mayor Satterthwaite would sponsor a group rate for any Plan Commission member interested in attending. The Institute will be held on February 26th and 27th at the Illini Union.

## 11. STUDY SESSION

There was none.

## 12. ADJOURNMENT OF MEETING

Chair Pollock adjourned the meeting at 8:53 p.m.

Respectfully submitted,

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Rob Kowalski, Secretary
Urbana Plan Commission