February 20, 2003

MINUTES OF A REGULAR MEETING

URBANA PLAN COMMISSION **APPROVED**

DATE: **February 20, 2003**

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

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

MEMBERS PRESENT:	Christopher Alix, Alan Douglas, Laurie Goscha, Lew Hopkins, Randy Kangas, Michael Pollock, Bernadine Stake, Don White
MEMBERS EXCUSED:	Marilyn Upah-Bant
STAFF PRESENT:	Elizabeth Tyler, CD Director; Teri Andel, Secretary
OTHERS PRESENT:	Robert Antequino, Patty Ebeling, Harry & Marilyn Querry, Susan Taylor, Eddie Tsui

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

The meeting was called to order at 7:32 p.m., the roll call was taken, and a quorum was declared.

2. CHANGES TO THE AGENDA

There was a revision to the agenda. Plan Case #1848-A-02 and Plan Case #1848-SU-02 were withdrawn by the petitioner, Ivan Richardson.

3. APPROVAL OF MINUTES

Ms. Stake moved to approve the minutes from the January 23, 2003 meeting and the minutes from the February 6, 2003 meeting. Mr. White seconded the motion. Both sets of minutes were approved by unanimous vote.

4. COMMUNICATIONS

- Letter from Harry & Marilyn Querry regarding Plan Case #1848-SU-02. Chair Pollock read the letter at their request.
- Staff memorandum update for Plan Case #1850-T-03

5. NEW BUSINESS

Plan Case #1848-A-02: An Amendment to an Annexation Agreement between the City of Urbana and the East Urbana Development Corporation approved on August 20, 2001.

The petitioner, Ivan Richardson, withdrew this case.

6. CONTINUED PUBLIC HEARINGS

Plan Case #1850-T-03: Request by the Zoning Administrator to amend Article X of the Zoning Ordinance, regarding Nonconformities created through Government Acquisition.

Elizabeth Tyler, Director of Community Development, presented a staff memorandum update. She noted that it was still a work in progress. Planning staff had been working with the legal division on some major changes to Article X of the Zoning Ordinance. The staff memorandum outlined staff's direction for Article X as it pertains to nonconformities pursuant to eminent domain. This would involve an amendment of several sections of Article X. However, she recommended that only Part A of the amendment be considered at this public hearing, because of a current situation that needs a timely decision to be made on the part of the City.

Ms. Tyler reviewed Part A of the amendment to Article X, Nonconformities from the updated staff memorandum. She mentioned that the City Attorney, Jack Waaler, had stated that the terminology "threat of eminent domain" was a recognized term and would be meaningful in this case. After her review of Part A, she noted that Part A was the provision that the City had been asked to move on.

Ms. Stake inquired how the letter would be, that is, a "threat of eminent domain"? Ms. Tyler replied that it would not be eminent domain until the proceedings begin. The City would start out nice informally with inquiries and negotiations. If the City and an owner of a parcel that is affected by reason of a government acquisition could not come to terms, then we would move to the next stage, which would be the actual eminent domain proceedings. Because it is so time consuming and difficult for all of the parties involved, every effort is made to negotiate a settlement before proceeding with eminent domain. Mr. Kangas added that the City Attorney would go before the City Council to ask for authority to go to court for eminent domain. At that point, the City would be threatening a parcel owner. Also, at that point, negotiations usually wrap up quickly.

Ms. Stake questioned if it could be possible to have a threat without any eminent domain? Ms. Tyler responded that an alternative means might be found. There could be the potential for a property to be considered for acquisition, and then by either alteration or abandonment of the project, the need for acquiring that property goes away. Ms. Stake asked if no land was taken in this case? Mr. Pollock answered that the land would not be taken, and there would be no compensation.

Mr. Alix questioned if the City Attorney issues such a letter as a matter of course prior to any solicitation to land owners to get them to sell? Or was there an informal process of contacting

landowners prior to issuing such a letter? If so, then should not these benefits attend to landowners who voluntarily agree to sell their property before the City threatens eminent domain? In other words, is sending out a letter threatening eminent domain the first thing that the City Attorney does when the City wants to buy property? Or is this letter something that only happens in a later phase? Ms. Tyler answered that practically speaking, first there are informal discussions and if it looks like the discussions are going to proceed and protection is needed, then the letter would be beneficial to trigger the zoning protection. At that point, the City Attorney would issue the letter for the record that the City was going to need the nonconformity protection. She believed that even though sending the letter was not the first step in the process, it would surely come into play before any action was taken.

Mr. Alix commented that the implication would be that unless a landowner knows to tell the City Attorney to write him/her this letter, then this protection would not attach to the landowner. Ms. Tyler responded that if there was any action by the City to acquire the property, then that would be essentially the "threat of eminent domain". It would be a record keeping responsibility for the City to make sure that the letter was in place, so we would know that the zoning provision applied. Mr. Alix stated that was his point. The language would only be acceptable to him if it was stated somewhere that as a matter of policy the City Attorney issued such a letter prior to raising the issue of acquiring any land whether through voluntary purchase, compelled purchase or through eminent domain. Ms. Tyler said that the City would want to have that documentation prior to the acquisition; therefore, the Plan Commission could add that to this amendment or it could be understood that such acquisition shall not be pursued until this letter was issued.

Mr. Alix was concerned that the City wants the benefit to go to a landowner who cooperates with the City instead of a landowner who says "no" and that he/she would lose all of their zoning protection unless he/she makes the City Attorney initiate the letter. Therefore, either the letter should be written as a matter of policy or the language in the amendment should be "loosened" to include a landowner who voluntarily sells his/her property to the City.

Mr. Hopkins suggested adding language to subsection A to read as follows: *Government Acquisition means acquisition by a government of a property either by eminent domain or under threat of eminent domain as evidenced by <u>initiative by the City to negotiate acquisition or</u> a letter issued by the City Attorney.* Ms. Tyler asked if *<u>and/or</u>* should be used? Mr. Hopkins asked why? Ms. Tyler replied that the City would start the initiative first, and then perhaps follow-up with a letter. Mr. Pollock noted that it was the concern of the Plan Commission that any time an instance occurs where the City buys any property and the threat of eminent domain was behind it, then the landowner should be accorded the protections.

Mr. Hopkins stated that raised another question. Does the City ever acquire property in a situation in which we would not use eminent domain? Mr. Alix answered that the City does that when we purchase derelict homes. Although the City could compel demolition of the home, the City would not have the right to take that property by eminent domain, since it would be a public good and not a public use. Ms. Tyler commented that the City acquires property by eminent domain all the time for parking lots, redevelopment sites, vacant properties for affordable housing, etc. It would be helpful to make this distinction. This amendment would be only for the taking situations.

Mr. Alix thought the original suggestion was to say that acquisitions that were subject to eminent domain or in which the City could invoke the threat of eminent domain. The goal was to accommodate and not require the City to threaten a landowner with eminent domain prior to the landowner gaining the benefits of Section X-10. Mr. Pollock stated that if eminent domain could be invoked based on what the City considers common public good, then it could be vague. He was concerned that he did not want there to be understandings in this that are not clear, because somewhere down the road it could be a problem. Mr. Alix felt it should be the City's obligation to indicate to the landowner prior to entering into negotiations of what the City's options are. We would not want the City to ask one landowner if they were interested in selling his/her property and if that landowner says sure, then have that landowner come back a year later and say that his neighbor was able to move their business because the City Attorney wrote him/her a letter. Ms. Tyler responded that the same procedure would apply. The City would not deny one landowner a letter and not the other.

Ms. Stake inquired if the City always needed the threat of eminent domain? Ms. Tyler answered that there were many times that the City bought property that was not mandatory. Sometimes that was where a road needed to be, and the City has to threaten eminent domain. However, the City has very rarely used eminent domain. Ms. Stake wondered whether this amendment would make it unfair to landowners who voluntarily sell their properties. Ms. Tyler replied that was not the intent. The City would never hide provisions of the Zoning Ordinance or let one party know about them and not another, because the Zoning Ordinance applies to everyone.

Mr. Alix felt that the language was better before when it just said "threat of eminent domain", because then at least a landowner could argue that in any purchase of land for a project in which there is a statutory basis for the City having eminent domain, he/she sold under the threat of eminent domain because the City would have had the right to compel him/her. Whereas with this language, it was essentially saying that the instruction of threat of eminent domain requires a letter from the City Attorney. However, it does not appear to impose any obligation on the City Attorney to write a letter or provide any guidance as to when such a letter would be written. Ms. Tyler responded that the clause was added in response to Plan Commission comments at the last meeting about use of the terminology "threat of eminent domain". The last clause was optional.

Mr. Alix stated that if it was not the policy of the City to issue a letter to the landowner in the first step that the City takes to acquire his/her land for a project to which eminent domain could be applicable, then the language in the amendment would not satisfy the desires of the Plan Commission, which would be to indicate that protections apply to people who sell their properties to the City for a purpose for which the City could take the land by eminent domain as opposed to after the City has sent a letter or initiated some manner to take the land or threaten eminent domain. Ms. Tyler commented that with the road projects, it was not something in which the City would send a letter. The City would talk to the landowners and try to work it out several times to redesign and find the best areas. The City would only issue the letter to landowners who the City could not communicate with that way, like an absentee landowner.

Mr. Alix stated that would underscore the point. In their first contact with any landowner, the City would point out their intention of purchasing the land and inform the landowner that he/she

is entitled to this potential route of relief through the Zoning Ordinance if it would impose a hardship on the landowner. The language of the amendment needed to be such that it made it clear that a landowner would be entitled to the benefits even if he/she had not been actively compelled to negotiate.

Mr. White suggested adding language to say that no matter why or how the City buys or acquires land, if it creates nonconformity for the landowner, then the landowner has the option to move or continue operating with nonconformity. Ms. Tyler mentioned that if we call it any government acquisition, then we are courting ourselves relief from zoning, which would be a whole other issue. She felt the language should include eminent domain. Ms. Stake questioned whether the language should not include hardship as well? Mr. Alix answered that if the acquisition does not impose a hardship, then there would not be anything to seek relief from. If the City buys a piece of property because it was a nuisance, and the City wanted to demolish the building on the property, that does not affect the rights of any of the adjacent landowners or put any of those adjacent landowners into nonconformity. Ms. Stake questioned if it would not create a hardship for the person who has to sell his/her property? Ms. Tyler stated that it would create a hardship if the acquisition changes the situation of a landowner minding his/her own business.

Mr. Hopkins understood that two things were trying to be accomplished with this text amendment. The first was to distinguish property that is acquired by eminent domain and under the threat of eminent domain. The second was to legally define what "threat of eminent domain" means. He suggested that the language in subsection A should read as follows: *Government Acquisition means acquisition by a government of a property either by eminent domain or under threat of eminent domain.* Mr. Alix stated that the implication would be that any acquisition by the City for which they could use eminent domain was done under threat of eminent domain. Mr. Hopkins said that was correct. Whoever deals with it when it happens could use whatever evidence they want to argue that either there was no threat of eminent domain or there was. At which time, the City Attorney may be the person who makes the statement. He moved to delete "as evidenced by a letter issued by the City Attorney" from subsection A of Part A of the amendment to Section X-10, Nonconformities Created Through Government Acquisition. Ms. Stake seconded the motion.

Ms. Tyler requested that the motion and second be withdrawn until staff could finish their report and public input could be heard, if any. Mr. Hopkins and Ms. Stake agreed to withdraw the motion and second.

Mr. Hopkins commented in Part B of the amendment, government acquisition is not defined in the same way as in Part A of the amendment. It should be by reference.

Mr. Alix felt that the language, which states as follows: *Relocation of any nonconforming use, building, or structure shall not be any greater in extent or intensity than the current use……..* was a good way of solving his other objection he had at the last meeting regarding the extension of impact or giving excessive leeway to move to the opposite corner of the parcel.
Ms. Tyler continued with her staff report regarding Part B of the proposed text amendment. She explained that this was still under construction and was not ready for action. She reviewed the updated staff memorandum and the outline draft for Eminent Domain/Conforming Status

Scenarios. She noted that staff would provide illustrations at the next meeting to give a better idea of each scenario. She explained that the Part B Amendment Outline Draft Eminent Domain/Conforming Status Scenarios would replace paragraphs B and C in the original staff memorandum.

Mr. Alix questioned if there were nonconformities involving things other than setbacks? Ms. Tyler answered that there were use nonconformities, open space nonconformities, pavement, parking, etc. Mr. Alix was concerned that all the nonconformities were addressed either individually or that the language would be made sufficiently general and not only regarding setbacks.

Mr. Alix stated that there needed to be some limitation on the degree to which expansion could occur into an existing setback. The City does not want to give people too much leeway to expand into the original setback. Ms. Tyler commented that was a good point, and that the City might want to look at setting a minimum. Even if there would be some loss, at least they would be able to encroach up to the minimum.

Mr. Hopkins moved to delete *"as evidenced by a letter issued by the City Attorney"* in Part A of the proposed amendment. Ms. Stake seconded the motion.

Mr. Hopkins inquired if the definition of "government acquisition" proposed in Section X-10 of the Zoning Ordinance would apply to the section immediately following Section X-10? Ms. Tyler replied that it would be most proper to add the proposed definition to Article II as well. Mr. Hopkins inquired if staff had looked throughout the rest of the Zoning Ordinance to see if it should be defined as such? He suggested that "government acquisition" be defined as applying to Section X-10 only or that the definition be modified to further say that if the owner of a parcel is effected by acquisition by a government or property either by eminent domain or under threat of eminent domain, of all or a portion of such owner's land asserts that his/her use. In other words, put the definition in place of the two words "government acquisition" in subsection B. Mr. Alix liked the first option the most. Ms. Tyler thought it would work. She noted that staff might go ahead and add it to Article II, Definitions as well.

Mr. Hopkins withdrew his motion, and Ms. Stake agreed.

Mr. Hopkins moved to change Part A of the Amendment to Section X-10, Nonconformities Created Through Government Acquisition so that subsection A be deleted, and subsection B become subsection A to read as such: *If the owner of a parcel that is affected by reason of a government acquisition of property either by eminent domain or under threat of eminent domain of all or a portion of such owner's land asserts that his/her use, ……* Ms. Stake seconded the motion. The motion was approved by unanimous voice vote.

Mr. Hopkins moved to add language to read as such: *……if the Zoning Administrator determines that allowing such move does not increase congestion in streets or endanger the health, safety, morals or general welfare of the area to which the use, building or structure is relocated or otherwise case <u>additional</u> violation of the Zoning Ordinance……..".* Mr. White seconded the motion. The motion was approved by unanimous voice vote.

Mr. Hopkins moved that the Plan Commission recommend approval of Part A of the Amendment to Section X-10 as amended to City Council. Ms. Stake seconded the motion.

Mr. Pollock stated that he has never been very comfortable with writing and drawing amendments to the Zoning Ordinance up on the floor, because it gets very complicated. However, he agreed that the City wants to try to accommodate the public.

The roll call was as follows:

Mr. Alix	-	Yes	Ms. Douglas	-	Yes
Ms. Goscha	-	Yes	Mr. Hopkins	-	Yes
Mr. Kangas	-	Yes	Mr. Pollock	-	Yes
Ms. Stake	-	Yes	Mr. White	-	Yes

The motion was passed by unanimous vote.

7. NEW PUBLIC HEARINGS

There were none.

8. OLD BUSINESS

There was none.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

Ms. Tyler reported on the following:

- ✓ *Text Amendments:* She noted that staff appreciates the guidance given on language for text amendments by the Plan Commission. City Council has so much business, and it really does get difficult doing ordinance changes on the Council floor.
- ✓ *Campus Commercial District:* She stated that this text amendment regarding a change to the open space ratio was approved by the City Council.
- ✓ *At the next meeting* there will be an updated zoning map presented to the Plan Commission.
- ✓ *Open House for the Downtown Streetscape Project:* She mentioned that there will be an Open House for the City's Downtown Streetscape Project with exhibits held from 6:30 p.m. to 7:30 p.m. on Monday, January 24, 2003 in the City Council Chambers. Everyone is welcome to attend.
- ✓ *"Planning Matters" Conference:* This conference will be held on February 26th and 27th. The Plan Commissioner Training will be on Thursday morning.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

Chair Pollock adjourned the meeting at 8:23 p.m.

Respectfully submitted,

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Rob Kowalski, Secretary
Urbana Plan Commission