MINUTES OF A REGULAR MEETING

URBANA PLAN COMMISSION

DATE: **April 20, 2006**

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

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

MEMBERS PRESENT:	Ben Grosser, Lew Hopkins, Michael Pollock, Bernadine Stake, James Ward, Don White
MEMBERS EXCUSED:	Jane Burris, Laurie Goscha, Marilyn Upah-Bant
STAFF PRESENT:	Elizabeth Tyler, Director of Community Development Services; Robert Myers, Planning Manager; Matt Wempe, Planner II; Paul Lindahl, Planner I; Teri Andel, Planning Secretary
OTHERS PRESENT:	Walter Crackel, Robert DeAtley, Doug Delashmitt, Kathy Ekstrom, Fred Heinrich, Lorean Howard, Bob Lord, Lisa Denson-Rives, Larry Wood, Carl Webber

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

The meeting was called to order at 7:30 p.m., the roll call was taken, and a quorum was declared.

2. CHANGES TO THE AGENDA

There were none.

3. APPROVAL OF MINUTES

Ms. Stake moved to approve the minutes from the March 23, 2006 Plan Commission meeting as presented, and Mr. Grosser seconded the motion. The minutes were approved as presented by unanimous voice vote.

4. WRITTEN COMMUNICATIONS

- E-mail from Daniel Wilson regarding Plan Case Plan Case No. 1986-SU-06
- Folder of Information from Adams Outdoor Advertising regarding Plan Case No. 1988-T-06

5. CONTINUED PUBLIC HEARINGS

There were none.

6. OLD BUSINESS

There was none.

7. NEW PUBLIC HEARINGS

Plan Case No. 2006-A-02 – Annexation Agreement for a three-acre tract of property at 2004 South Philo Road / Grace United Methodist Church Farm Parcel.

Plan Case No. 1983-M-06 – Request to rezone a three-acre tract of property at 2004 South Philo Road from Champaign County R-2, Single-Family Zoning District to City R-4, Medium Density Multiple-Family Zoning District upon annexation.

Matt Wempe, Planner II, gave the staff report for this case. He presented background information on the case and discussed the annexation agreement and proposed rezoning request. He gave a detailed description of the proposed site and of its surrounding neighboring properties noting their zoning and land uses. He talked about the La Salle National Bank Criteria as it pertained to the rezoning request.

Ms. Stake inquired if a notice had been sent out regarding this public hearing. Mr. Wempe replied by saying that notices are always sent out to the respective fire protection district and township officials as required by state law. City staff also notified surrounding property owners.

Chair Pollock opened the case up for public discussion. There was none. He then opened it up for Plan Commission discussion.

Mr. Ward moved that the Plan Commission forward Plan Case No. 2006-A-02 and Plan Case No. 1983-M-06 to the City Council with a recommendation for approval for the proposed annexation agreement, including a zoning designation of City R-4, Medium Density Multiple-Family Residential Zoning District, for the site. Ms. Stake seconded the motion. Roll call was as follows:

Mr. Hopkins	-	Yes	Mr. Pollock	-	Yes
Ms. Stake	-	Yes	Mr. Ward	-	Yes
Mr. White	-	Yes	Mr. Grosser	-	Yes

The motion was passed by unanimous vote. Mr. Wempe noted that these two cases would go before the City Council on May 15, 2006.

Plan Case 1986-SU-06 – Request for a Special Use Permit to install an Antenna with Tower within 250 feet of a residential zone or land use at 1115 West Church Street in Urbana's IN, Industrial Zoning District.

Paul Lindahl, Planner I, presented this case to the Plan Commission. He explained the purpose for the special use permit request. He described the site and surrounding properties noting their zoning and land uses. He reviewed the guidelines for reviewing telecommunications facilities, tower and antennas according to Section V-11 of the Urbana Zoning Ordinance. He referred the Plan Commission to the picture of a similar pole on the last page of the packet information. He discussed the petitioner's perspective and reviewed the waivers requested by the petitioner, noting that there would only be three waivers being requested rather than four as specified in the written staff report. Since the petitioner's plans have changed to locate the pole within the already fenced in area, the first waiver mentioned in the written staff report was no longer needed. He went on to read the options of the Plan Commission and presented staff's recommendation, which is as follows:

> Based on the evidence presented in written staff report, and without the benefit of considering additional evidence that may be presented during the public hearing, staff recommended that the Plan Commission recommend approval of the proposed special use permit in Plan Case No. 1986-SU-06 to the City Council as presented including the approval of the requested reductions in telecommunications requirements as follows:
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> *1) Sec. V-11.G.2 - the requirement to provide a residential quality wood privacy fence around the tower.*
> *2) Sec. V-11.G.2 and 4 - the requirement to screen a chain link security fence with evergreen vegetation of six feet in height.*
> *3) Sec. V-11.Q.7.a - the requirement to provide a landscape buffer.*
>
> With the following conditions:
>
> 1. The design, installation, and operation of the pole, equipment enclosure and associated antenna equipment shall be in accordance with the submitted site plans, and technical specifications.

Mr. Grosser inquired as what else in the City of Urbana was 100 feet tall. Mr. Lindahl replied that he was not quite sure, but he believed that the antenna behind the City building was about 100 or 110 feet tall.

Mr. Grosser wondered if City staff had received any communications from the surrounding neighbors. Mr. Lindahl remarked that he had gone to the subject property and spoke with one of the owners of the industrial contracting office across the street to the west. This person expressed some concerns about the location of the tower when the tower was being proposed to be located outside of the fenced in area. Since this conversation, the petitioner has changed the location of where the pole would be located.

Ms. Stake noticed that the proposed location would be approximately 122 feet from the nearest residence, and she thought the requirement is 250 feet. Mr. Lindahl clarified that the requirement was in order to place a tower within 250 feet of a residential zone or land use, then a special use permit would be required, which is the reason for this case. Now that the petitioner is proposing to place the tower inside of the already fenced in area, the tower would be 122 feet from the property line of the nearest single-family residence to the north across Church Street. Robert Myers, Planning Manager, added that a tower must be set back a distance equal to its height from a residential zoning district. The proposed tower would be approximately 90 to 100 feet tall, and it would be set back about 122 feet from the nearest residential property line.

Mr. White questioned what the range would be for the tower. It appeared to him that there were not a lot of places where the petitioner could put up the tower, where it would be in the center of the customer base. Mr. Lindahl stated that the petitioner could answer this question.

Ms. Stake asked if the tower would transmit signals to Kansas City. Mr. Lindahl answered by saying no. The tower itself would be receiving signals from around the community. Those signals that are received would be transferred to telephone lines underground. The data on them would be transmitted to a CellNet operation center. One of CellNet's operation centers is located in Kansas City. CellNet was proposing to build another operation center in Danville, Illinois. The concentrators around town could probably only transmit signals from within a couple of miles. For this reason, CellNet needs to place a tower near the center of the City.

Ms. Stake wondered how far out the tower in Champaign transmitted signals. Mr. Lindahl replied that he did not know. Ms. Stake commented that they did not place that tower in the middle of the City of Champaign. Mr. Lindahl responded by saying that CellNet had the opportunity to rent a space on a radio tower in Champaign. It was located on one of the highest topographic points in Champaign County. Therefore, the tower in Champaign was located in a very good spot. However, there was not any place in the City of Urbana that had the same topographical height.

Mr. Ward inquired if there was any information available relating to the structural integrity of a wooden pole in instances of stress as opposed to some alternative construction, such as a steel tower. He was particularly thinking of an incident at the corner of Mattis Avenue and Windsor Road. There was a utility wood pole similar in height. We had high winds recently, and the pole blew down. He did not feel that a 100 foot tower made out of wood would make sense. Mr. Lindahl commented that he was not a structural engineer and not qualified to review the engineering requirements of the construction of the pole. He was given a set of standard operating procedures and criteria for the types of wooden poles that Illinois Power uses. There was a great deal of information regarding distances and heights.

He went on to say that the proposed pole would be standing alone, without cross ties and without the extra weight or stress of the power wires and cables on them like the ones on the corner of Mattis Avenue and Windsor Road. Elizabeth Tyler, Director of Community Development Services, pointed out that the Plan Commission was reviewing the zoning for this case. There were two permits that the City would need to grant for the proposed tower. The Plan Commission was reviewing the zoning, which requires a special use permit due to the distance of

the proposed site to residential uses. The City would also need to grant a building permit or utility permit. During this permit process, City staff would be reviewing the structural integrity of a pole, and they would be looking for an engineer stamp certifying the safety of the structure. Mr. Ward felt it was a pertinent question given the proximity to residential uses.

Mr. Pollock asked where the pole and tower in the picture on the last page of the staff packet was located. How high is the pole? Mr. Lindahl replied that it was provided as an example by the petitioner. He did not know where or how high the pole is.

Kathy Ekstrom, of Ameren IP, and Doug Delashmitt, of CellNet Technologies, approached the Plan Commission to answer any questions that the Plan Commission may have.

Mr. Ward asked if they had any insights in response to his previous question about the type of tower and the safety aspects of it. Mr. Delashmitt stated that originally in dealing with the aesthetics of Champaign, Urbana, Danville, Georgetown and other areas that they are reaching out to, he felt that a wood pole would look aesthetically the best due to the other poles in the area. Another reason he choose wood is because if a steel pole would fall over and hit power lines within the electrical substation, then it would be a good conductor and would create safety hazards.

Mr. Ward inquired if Mr. Delashmitt had any information on the structural integrity of a wood pole versus a steel pole. Mr. Delashmitt replied by saying that he did have information, but that he did not have it with him at the meeting. He could provide that information through Mr. Lindahl.

Mr. Grosser wondered if CellNet had any other 100-foot towers made out of wood in the Midwest. Mr. Delashmitt stated that they have around 47,000 concentrators on poles throughout the United States. The takeout points vary from steel to high-tension tower to wood poles. He mentioned that the picture in the packet is of a pole in Colorado Springs, and it is 60-foot in height. It shows the exact same antennas that would be on the proposed wood pole.

Mr. Grosser questioned whether there would be any potential for interference with other cell phone services. Mr. Delashmitt said that it would be in the same frequency. It would be 902 to 928. The signals would be separated by the use of frequency hopping and spread spectrum technology. It would be such a low wattage, that it would almost be unnoticeable.

Mr. Grosser asked if CellNet would need to get approval from the Federal Communications Center (FCC). Mr. Delashmitt said no. It was approved through Part 15 of the FCC licensing.

Mr. Grosser wondered if this would eventually make everybody's power and gas automatically read. Ms. Ekstrom replied yes, and it would be very accurate. Mr. Delashmitt pointed out that CellNet reads 11,000,000 meters every night and provide the information to Kansas City. Ms. Ekstrom reassured the Plan Commission that Ameren IP would still do all of their limitations and verifications on the readings.

Ms. Stake asked why the petitioner had chosen the proposed site with it being so close to single-family residence. Mr. Delashmitt stated that after securing a "takeout point" at Illini Radio Tower on Bradley Avenue, he ran propagation studies using CellNet's technology as the basis. He found a footprint around the City of Urbana area that they would not be able to read. As he does surveys looking for sites to locate these towers, one of the main things he looks for is aesthetics. He is also concerned with whether it is zoned industrial and is safe for the public.

Ms. Stake questioned if Mr. Delashmitt felt that the height of the antenna would be a problem for the surrounding neighbors. Mr. Delashmitt commented that as far as aesthetics, the pole would only be about 40 feet higher than all of the poles in the area. As far as emission of radio frequency, he was not concerned because it would be equivalent to the power of a cell phone.

Ms. Stake asked for clarification regarding the four requested waivers. Mr. Pollock stated that the first waiver was no longer being requested, because the petitioner planned to locate the tower within the enclosed area rather than outside the fence.

Ms. Stake inquired what the petitioner planned to do to the area around the tower in order to make sure that it was aesthetically pleasing. Mr. Delashmitt stated that the tower would be inside the existing fence of the electrical substation, so all they planned to do is put a gate on the fence for access.

Lorean Howard, of 1114 West Church Street, stated that she also owns 1112 West Church Street. She stated that she was also there representing her neighbors that own the first three houses on her street. She described the residential area. She is in opposition to the proposed special use permit. She opposes this because it will be directly across the street from where she lives.

When the electrical substation first started out, it was not as big as it is now. It has grown over the years. The proposed tower would be located across the street from her home, and it would not be a pretty sight.

Ms. Howard pointed out that having an electrical substation and the proposed tower across the street from her home lower her properties values. She recently had an appraisal done on her home, and she had to get "no fault zone" papers from Ameren IP. She had a very difficult time getting Ameren IP to sign and return these papers to her.

She is concerned about the safety of the residents and children in the neighborhood. Animals get into the fenced in area and cause the breakers to blow. What happens if the proposed tower blows over from a strong wind?

Someone said that they went out and walked the neighborhood and talked to the residents. There are only nine houses on the block, and no one talked to her to get her opinion.

Ms. Howard mentioned that she had a satellite dish in her front yard, which she could not use. Because of the area having an electrical substation with tall poles and with the trees, she could not get a signal. This is the same reason that CellNet would need to put a pole 40 feet higher than the existing electrical poles.

Ms. Stake inquired if Ms. Howard had received a notice of the public hearing on this case. Ms. Howard said that she received a letter in the mail. Other than a letter notifying that there would be a public hearing, she did not receive any other information in the mail. As far as a sign being posted on the proposed site, she noticed that there was only one sign posted on the site along Goodwin Avenue. It was not posted where people could see the sign.

Mr. Pollock asked what a "no fault zone" is. Ms. Howard explained that the Federal Housing Authority (FHA) has a lot of requirements that a person must meet prior to getting a loan to buy a house. She had to get an appraisal on her home. Part of the process of getting her home appraised involved getting a letter from Ameren IP stating that her home was in a "no fault zone". The letter is suppose to say that Ameren IP would take the blame for anything happening to her home with relation to the electrical substation across the street.

Ms. Howard remarked that Ameren IP does not take the blame for anything. It was hard to get them to come over and let the Fire Department in the fenced in area to put out fires. None of the residents know what the maximum amount of wattage is safe for humans to be around or how much wattage the substation carries. She wanted to know why this site was chosen.

Robert DeAtley, of Barber and DeAtley, stated that his business is located across the street from the proposed site. He expressed concern about the proposed location of the pole. Although Mr. Lindahl stated that by the petitioner moving the location of the proposed pole 15 feet to the east, it would no longer be in the fall range of hitting the business to the west, which is his business. As you can see in Exhibit E, Site Diagram, his business would still be in the fall range by about a foot or so.

He went on to say that the pole was delivered on Friday, April 14th. That seemed to be a little presumptuous. He measured the pole, and it is 110 feet.

Mr. Pollock asked if it turns out that his business is still in the fall zone, did Mr. DeAtley have an opinion of whether or not the proposed case should be approved. Mr. DeAtley responded by saying that he felt it would be a safety hazard. He understood that the site had been considered, and it was important to get a site where as few cells are needed as possible. There were a number of 30, 40 and 60-foot poles up and down Goodwin Avenue already. There was certainly the eyesore of the electrical substation itself, so he was not sure that it would be much worse than what already existed.

Mr. Grosser inquired if the location of the pole was moved so that if it fell over and did not hit his business, then would Mr. DeAtley still be opposed to the case? Mr. DeAtley replied "probably not".

Ms. Ekstrom and Mr. Delashmitt re-approached the Plan Commission. Mr. Pollock commented that one of the peculiarities was that the City Council could impose conditions on the special use permit. He asked if Ameren IP had enough room to move the proposed pole 15 feet further east of the proposed location, so that it would be out of the fall zone of the neighbor's building. Mr. Delashmitt replied that he did not see why they could not move it another 5 feet.

Ms. Stake stated that she was confused about what already is there and how difficult it would be to add the proposed pole. Mr. Delashmitt explained that there was already a large electrical substation located there. He believed that Ameren IP had an easement to the east to expand further. Obviously, as more people move into the area, Ameren IP will need to expand to be able to provide electricity to the consumer, whether it is residential or commercial.

For clarification, Ms. Stake asked if that had anything to do with the proposed tower. Ms. Ekstrom replied no. There would not be any additional electrical lines going to the proposed pole. Ms. Stake inquired if Ameren IP and CellNet had any trouble working together. Mr. Delashmitt said no.

Ms. Stake commented that she did not understand about the fires. It sounded very dangerous to her. Mr. Delashmitt explained that there were a lot of rodents, animals and such. Ameren IP did install a critter fence around the substation, because animals were getting in and chew up transformer wires. Ms. Stake asked if this electrical fence would be dangerous to the children in the residential neighborhood. Mr. Delashmitt stated that the electrical fence was buried and that it is not dangerous.

Mr. Myers inquired about the wattage being transmitted. Mr. Delashmitt answered by saying that the wattage would be equivalent to 158 milliwatts. It would be smaller than the wattage transmitted from a cell phone, but a little more than a baby monitor. One difference would be that a baby monitor is always left on, and the tower would not transmit continually.

Ms. Howard re-approached the Plan Commission. She asked if the proposed tower could also fall on the substation. Mr. Pollock stated that could be a possibility.

Ms. Stake questioned whether or not the railroad used the tracks located to the south of the proposed site. Ms. Howard said yes. There was a train that uses the tracks twice a week.

With no further comments, Chair Pollock closed the public input portion of the public hearing.

Mr. Lindahl clarified that City staff was required to send out notifications to all of the neighbors within 250 feet of a subject property. For the proposed special use permit public hearing, he sent out 54 notices to the properties within the 250 feet area, and he received 7 notices back from the Post Office stating that there was no resident on file. Until this meeting, he had not received any communications from concerned neighbors. He pointed out that there were not any requirements for staff to walk around the neighborhood and talk to the neighbors. He happened to be out at the proposed site when he ran into Mr. DeAtley and his father. Ms. Stake mentioned that she would like for City staff to add a copy of the mailing to the packet of information.

Mr. White stated that electronic reading of meters would be nice. It appears that there are not too many places that a tower could be placed where it would be effective. Because of the range and topography, the proposed site is one of the few places that a tower could be located. It would be located on property owned by Ameren IP, so Ameren IP would have to worry about the proposed tower falling onto their own substation. He was in favor of the proposal.

Ms. Stake felt that the electrical substation created enough problems already. She did not feel that they should add any more problems by approving the proposed tower. A special use permit requires that the Plan Commission and the City Council look at everything including that the residential owners are taken care of. She did not feel that the residential property owners were being taken care of in this area.

Mr. Ward mentioned that he drove out to see the site. He was not concerned with the aesthetics of the subject site, because it was not particularly attractive now. The proposed pole would not make it any less attractive. He was concerned, however, about the pole itself being 100 feet in height.

He went through the criteria used to review a special use permit application. He believed that it could possibly be injurious or detrimental to the district or to the public welfare, because he had not heard otherwise. Therefore, he was not in favor of the proposed special use permit.

Ameren IP and CellNet had not done a particularly good public relations job in notifying the neighborhood according to many of the residents in the neighborhood. Although it was none of the City's business, Mr. Ward believed that it should be noted somewhere.

Ms. Stake commented that the Plan Commission had been talking about the possibility of the proposed pole falling over. She remarked that if a storm causes it to fall over, then the wind would blow it further away. She felt it would be too close to the single-family residences. So, she would like to deny the request.

Mr. Grosser stated that he had trouble sharing the concern of the proposed pole falling, because the likelihood of the damage and the costs of those damages would be more extensive than whatever savings might be made by putting the pole in this location. So, if Ameren IP was concerned about the pole falling, then they would not place it next to the electrical substation where it could cause a lot of damage.

He agreed with Mr. White in that he had read articles about causes for concern about living close to power lines. This case, however, was about a wattage equivalent to less than a single cell phone, so he was not concerned about the electrical or any other kind of signal interference from this particular proposal.

Ms. Stake stated that she was not concerned about the proposed pole falling and hitting the electrical substation either. She was concerned about it falling and hitting something else in the area. Mr. Grosser commented that he agreed with her. However, he was not sure where a 100-foot pole could go anywhere in the City without having that concern. In this particular case, the Plan Commission should add a condition that the pole should not be located within 100 feet of any neighboring structure.

Mr. White moved that the Plan Commission forward Plan Case No. 1986-SU-06 to the City Council with a recommendation for approval along with the requested waivers 2, 3 and 4 as mentioned in the written staff report. Mr. Hopkins seconded the motion.

Mr. Grosser offered a friendly amendment that the proposed pole should be located equal to or greater than 100 feet away from any structure on any property belonging to someone other than Ameren IP. The amendment was accepted by the mover and seconder. Roll call was as follows:

Mr. Pollock	-	No	Ms. Stake	-	No
Mr. Ward	-	No	Mr. White	-	Yes
Mr. Grosser	-	Yes	Mr. Hopkins	-	Yes

The motion failed by a vote of 3 ayes to 3 nays. Chair Pollock said therefore the Plan Commission would send this to City Council without a recommendation for approval or denial. This will go to City Council on May 1st.

Plan Case 1988-T-06 – Text Amendment to the Urbana Zoning Ordinance changing the standards and procedures for outdoor advertising sign structures (billboards).

Robert Myers, Planning Manager, gave the staff presentation for this case. He began by talking about the history of the moratorium which will expire on July 17, 2006. He talked about the reasons for the moratorium. He reviewed the goals and objectives of the 2005 Comprehensive Plan and the Downtown Strategic Plan that related to the proposed text amendment. He presented the legal framework for the proposed billboard text amendment including the federal laws and regulations, state laws and regulations, and significant court cases. He discussed the two major concerns that led to the enactment of the existing moratorium, which are proliferation and visual impact. He showed pictures of different billboards located throughout Champaign-Urbana. He reviewed alternative visions for how Urbana might deal with billboards generally, which are 1) decrease (oppose) billboards, 2) maintain (tolerate) billboards and 3) increase (encourage) billboards.

Mr. Myers gave an overview of the changes to the billboard ordinance. He talked about the following changes: 1) Separation distance, 2) Rows of billboards per corridor, 3) Downtown billboards, 4) Maximum height, 5) Building Encroachment, 6) Minimum height, 7) Special Use Permit, 8) Measurement standards and 9) Landscaping standards. He summarized staff findings, read the options of the Plan Commission, and presented staff's recommendation, which was as follows:

> *Based on the evidence presented in the written staff report, and without the benefit of considering additional evidence that may be presented during the public hearing, staff recommended that the Commission recommend approval of the proposed Outdoor Advertising Sign Structure (OASS) text amendment to the City Council.*

Mr. Myers mentioned that there were representatives in the audience from Adams Outdoor Advertising. They had a presentation to make, and it was important for them to have an opportunity to speak because the proposed ordinance would affect their business.

Mr. Pollock introduced Jim Gitz, City Attorney. He stated that if any of the Plan Commission members had questions for Mr. Gitz regarding the previous lawsuit or the legality or the constitutionality of what was being proposed, then he would be available to answer them.

Mr. Grosser commented that in looking at the summaries of the C & U Poster lawsuit and of the Metromedia lawsuit, he noticed in particular that the Metromedia case notes that the City of San Diego's interest in traffic safety and community aesthetics were enough to justify complete ban. There were a couple of problems with it in that it appears that the proposed ban was trying to ban commercial messages and not ban non-commercial messages. The C & U Post case appeared to have similar problems. So, given both of these cases and that some things seemed to have been seen as okay and others were not and given an ordinance that does not discriminate over what kind of speech is on a billboard, did Mr. Gitz see the same kinds of legal problems with this? Mr. Gitz responded by saying that the proposed ordinance seeks to be neutral in regards to commercial versus non-commercial speech. Now, it may end up being up to a judge as to whether the City of Urbana has succeeded in this or not.

There is a definite risk here, and there are two arguments that are frequently made. The Community Development Services Department has sought to taken into account these two arguments. One of the arguments is to what extent can the City regulate billboards. If the City treats private and billboard signage properly, then there are ways to thread the needle.

The second way that communities have gotten into legal trouble was because it is so expensive to condemn a sign and pay just compensation. It frequently runs into the millions of dollars in calculations.

Recently, there were a number of Appellate Court decisions in the State of Illinois that have said that they do not believe amortization to be an appropriate approach either. He stated that in his opinion, this is an open question, because the Illinois Supreme Court has not weighed in on it, and he believed that they may very well do it shortly.

Therefore, there are some issues that the City needs to take into account. For this reason, he counseled the Plan Commission to not be in a hurry to pass the proposed ordinance. If the Plan Commission wants to take some more time and calculate some more questions or look at some exact cases, then they should do what they believe is appropriate to satisfy themselves on these issues.

Mr. Gitz went on to talk about a letter he received from Adam's attorney saying that the City was barred from this kind of regulation by the terms of the 1985 settlement agreement. While he felt that the Plan Commission should give careful attention to what the representatives from Adams Outdoor Advertising had to say, he does not agree with their position.

First off, the billboard company is maintaining that the 1985 settlement agreement is binding on the City essentially in perpetuity. If you accept their interpretation, then the Plan Commission and the City Council could change virtually any law, ordinance or zoning provisions that we have, but you could not possibly touch anything about billboards. He has trouble interpreting the settlement agreement this way, because the sign company will tell you that Section 1.B of the

settlement agreement was all about attorney's fees. He then read Section 1.B of the settlement agreement between C & U Poster Advertising Company and the City of Urbana to the Plan Commission. He feels that a more realistic interpretation of this Section is that the sign company said that they wanted some stability in how the City was going to handle the issue for some time to come. The incentive was that the sign company would abate the attorney's fees providing they would not have to argue about more stringent controls up through January 1, 2004. So, he believes that attorneys' fees are part of the package and incentive for some stability. The 1985 settlement agreement settled particular litigation about a particular set of ordinances which were subsequently changed.

In January of 2004, the City Council adopted a moratorium. Why did they adopt a moratorium if the 1985 settlement agreement was binding upon the City in perpetuity? Clearly, his interpretation is that the City settled some litigation, acknowledged the error of the City's ways at the time, went forward and placed a moratorium in 2004, and now in 2006, the City is stating that we cannot adopt a continuing moratorium forever. The courts frown upon that, and they want the City to do something. The something in this case is to take into account the litigation that has taken place and to take into account the Constitution aspects of speech and state court judgments. What is it that we can do to balance the community's needs and equities for aesthetic and developmental reasons that would still meet the test of law? This is the delicate balance that the proposed ordinance was seeking to achieve.

What is interesting is that the proposed ordinance would not take away existing billboards. It is not prohibiting billboards under all circumstances. It is not treating different classes of signage in different ways. He feels that these are three critical elements for the City to go about our business in a legal way.

He realized that the billboard company may have a different view of this. He felt that the Plan Commission and City Council should listen carefully to what the billboard company has to say. There may even further adjustments to the proposed ordinance that would meet some of the billboard company's needs. However, he did not think that anyone would realistically believe that a settlement agreement made in 1985 meant in 2006 that the City could not do anything to take into account recent litigation and make adjustments to our own Zoning Ordinance to try to handle these issues in a responsible way.

Mr. Grosser asked for clarification that the proposed ordinance would make new billboards not allowable in the B-4 Zoning District. Mr. Myers said that was correct. It essentially covers Downtown Urbana and does not include any of the major corridors.

Mr. Grosser questioned if all of the existing billboards in the B-4 Zoning District would become legally non-conforming. Mr. Myers said yes. Mr. Grosser inquired as to what happens to a non-conforming billboard over time. What would happen if the sign was blown over during a storm? Mr. Myers answered by saying that the Zoning Ordinance details what happens in cases like that. If it is non-conforming, a billboard could essentially be maintained as long as the property owners maintain it. If it should be destroyed, then the Zoning Ordinance provides different scenarios and what would happen based on the specific circumstances.

Mr. Grosser asked Mr. Gitz if it was the cases that he had alluded to not having been decided by the Supreme Court that could provide further case law to guide us on questions of what would happen to billboards in the B-4 Zoning District. Mr. Gitz replied yes. He thought it would be appropriate to focus on non-conforming uses and what kind of issues could arise from it.

Mr. Grosser inquired as to how City staff chose 1,500 feet. Mr. Myers responded by saying that distance deals with the issue of proliferation. Mr. Grosser asked why not 2,000 feet. Mr. Myers stated that City staff had carried out GIS analysis, and 1,500 feet seemed to be most appropriate. Staff wanted a reasonable distance between billboards. Under the proposed ordinance, about three or four more billboards could theoretically be constructed.

Mr. Grosser wondered where it is stated in the Zoning Ordinance that billboards would not be allowed in the B-4 Zoning District. Mr. Myers said that it was in Table IX-5. Standards for Outdoor Advertising Sign Structures.

Mr. Grosser questioned if there is any fee associated with billboards. Mr. Myers replied that there was a fee as with all sign applications. Mr. Grosser inquired if the fee was recurring in any way. Mr. Myers said no.

Mr. White asked if there was a condition or scenario mentioned where a non-conforming billboard falls down or if it is not used as a billboard for a certain period of time, then it would have to be removed. Mr. Myers remarked that these were two different scenarios. Ms. Tyler stated that these scenarios are covered under Article X of the Zoning Ordinance. Specifically, Section X-4 of the Zoning Ordinance would give staff some guidance in this scenario. If the City felt that there was abandonment, then the sign company could lose the ability to continue as a non-conformity.

Mr. Pollock wanted to know if this would be an administrative decision. Ms. Tyler said yes. As Zoning Administrator, she would review Section X-4, consult with the City Attorney, and yield an interpretation which could then be appealed potentially to the Zoning Board of Appeals. She mentioned that Section X-9 deals specifically with non-conforming signs.

Mr. Pollock asked Mr. Gitz if he saw any particular liability in adding a requirement for a special use permit for the construction of new billboards. Mr. Gitz stated that he would need additional time to think about it before responding.

Mr. White stated that he did not see where Section X-9 would take care of a billboard that had not been used for a period of time. He did find it curious that billboards could not be altered to prolong their lives. How does this fit in with maintenance? Ms. Tyler answered by saying that maintenance would be like painting. Adding a second support would extend the life of the sign and would not be allowed. Mr. Myers noted that if sign companies replace a wood post with a wood post, then it would be considered routine maintenance. Mr. White suggested that City staff change the wording to clarify this.

Mr. White stated that the problem would be that it would take away the right of the owner of the property to continue to make money by having a sign located on it. Ms. Tyler stated that if it

was a properly platted lot, then it would have many other uses available to it. Mr. White commented that many of the parcels where billboards are located look like little slivers of land next to what was the railroad right-of-way.

In looking at Section X-9.C.1, Mr. Grosser understands this to say that all non-conforming signs shall be removed or brought into conformity of the Zoning Ordinance within five years of an amendment of the Zoning Ordinance text. Therefore, if the Plan Commission and City Council pass the proposed amendment, wouldn't downtown billboards have to be removed within five years? Mr. Gitz believes that this might need some modification in order to meet the legal requirements, because if the City has a provision for non-conforming signs, then the City could make billboards non-conforming. But if the City requires removal, separate and apart from any settlement agreement, then there may be Constitutional issues about requiring removal if you do not have compensation for doing so.

Mr. Myers pointed out that sign amortization provisions were enacted into the Zoning Ordinance years ago. Since that time, there have been some court cases and even some changes in state law that deals with amortization of billboards in particular which change the landscape.

Mr. Pollock commented that if they are going to consider enacting an ordinance and the changes they make in the ordinance trigger other changes in different sections of the Zoning Ordinance, then they need to think about this as they consider the proposed text amendment. This does not have to be done at this meeting. This is a pretty complicated issue, and there are a lot of legalities. Therefore, he suggested that the Plan Commission continue to hear testimonies and review this, but do not plan on taking action on the proposed amendment at this meeting. He would like to take a closer look at some of the material that they received at this meeting.

Mr. Gitz stated that he could not guarantee that he would always be able to come to every one of the Plan Commission meetings, but he would invite as both as a Commission and individually that if there are questions being directed to the Community Development Services Department that have a legal context, then feel free to share them with City staff, and they will get the questions and concerns to him. If he has a list of the Plan Commission's concerns regarding different sections, then he could focus closely on them and get answers back to them.

Chair Pollock opened the public hearing up for public testimony.

Lisa Denson-Rives, of Adams Outdoor Advertising, approached the Plan Commission. She introduced Bob Lord, General Manager for Adams Outdoor Advertising, and Fred Heinrich, Legal Counsel for Adams Outdoor Advertising. She mentioned that Mr. Lord would begin by talking about their company and their business philosophy. Mr. Heinrich would then talk to the Plan Commission about some of the legal cases, which were mentioned by Mr. Gitz and Mr. Myers. She would then finish up with some comments about the Zoning Ordinance current and proposed.

Mr. Lord stated that he was accountable for the Champaign market. Adams Outdoor Advertising purchased C & U Poster from Kip Pope in 2001. Adams was very excited when they entered the billboard market in Champaign-Urbana. They are still excited to be part of the Champaign-

Urbana area. Adams Outdoor Advertising is located in several other communities as well as in Champaign-Urbana. They are the fifth largest outdoor sign company in the country.

Adam's is a community-oriented company, and they are involved in the community. They serve on Boards and are involved with public service organizations. They take pride in their inventory and in the way that the billboards look. They want to be the media of choice in the outdoor area and want to be the employer of choice. It is a small company, and the Champaign-Urbana branch employs 15 full-time people. At the end of May, they will employ 16 full-time people. In 2005, Adam's incurred $1.25 million in expenses to operate their business. $625,000 was spent on payroll.

Adam's Outdoor Advertising wants to partner with the City of Urbana. They have visited with Ms. Tyler and Mr. Myers on several occasions. They want to do what makes sense for where the City wants to go. It was important to listen and get down to the truth of where we are and what we want to accomplish. There is no reason why there cannot be common ground between the City of Urbana and Adam's Outdoor Advertising.

Fred Heinrich, Counsel for Adam's Outdoor Advertising in Champaign-Urbana, talked about three legal concepts. First of all, the First Amendment is a very complex area of the law. The bottom line is that commercial and non-commercial messages carried on billboards are entitled to First Amendment protection. In the Metromedia, Inc. versus the City of San Diego case, the total ban language was dicta. Dicta is language that is unnecessary for the holding in the case, and that frankly is exactly what that language is, because the City of San Diego was not looking for a total ban in that case.

How the First Amendment principles apply in any given set of circumstances is impossible to predict until a set of facts are in front of you. It is very complicated because litigation can get very lengthy and also very expensive.

He used special use permits as an example of a place where a constitutional issue could very well come up. If for example, a special use permit was not required for an on-premise sign, meaning business owner on his own property puts a sign up, and a special use permit is required for an off-premise sign, then he believed there was makings for a great constitutional case under the First Amendment.

The other area where he thought special use permits are particularly vulnerable is in that exercise of judgment and discretion will always call into play the ability to claim arbitrary or capricious action or if there are inconsistencies in the application of the standards.

Secondly, Mr. Gitz read the language from the settlement agreement between C & U Poster Advertising Company and the City of Urbana. Adam's position is not saying that the City of Urbana cannot change their ordinance. Adam's is simply saying that the City can change it but there will be consequences. If the ordinance would have became more strict before January 1, 2004, then the consequence would have been that the deal would have been off in terms of waiving half of the attorney's fees that had been awarded in the court case by Judge Delamar.

Lastly, he spoke about just compensation. Mr. Gitz had mentioned that there were some recent cases regarding just compensation. In fact, there is a very recent case handed down March 24, 2006 in the Second District Appellate Court involving the City of Oak Brook Terrace. In this case, the Appellate Court specifically said that amortization is not equivalent to just compensation. This means that if an ordinance requires the take down of signs over time, then that is not enough to compensate the outdoor advertising company. He suggested that just compensation means fair market value. Fair market value is calculated based on highest and best use. The point of bringing up the Oak Brook Terrace case is that what just compensation is in any particular set of circumstances has to do with what exactly is being taken.

Adam's Outdoor Advertising, in many situations, has not only a lease for the ground, but a permanent easement as well. When the City talks about taking down an outdoor advertising structure, the actual cost of the structure and the investment in the capital improvement is only a small part that is being taken. What is really being taken away is an income stream. When you are talking about a permanent easement, then you are talking about an income stream that goes into perpetuity. In those cases, where we are talking about just compensation, the numbers are going to run very high.

Mr. Heinrich went on to say that Mr. Myers had opened his presentation by talking about the City's two main concerns. Adam's, during the conversations with City staff, have made suggestions on how to deal with the following issues: 1) Dealing with specific issues and signs and 2) adopting a Cap and Replace program.

Adam's wants to get the specific concerns about specific locations on the table and discuss them. Then, they could address an appropriate resolution.

Adam's understands that the City feels it needs to do something about billboards. However, there are alternatives out there to what is being considered right now that apparently are not on the table. When Mr. Myers was talking about either decrease (oppose), maintain (tolerate), or increase (encourage) billboards, he mentioned that the City was tolerating billboards through this ordinance change. Mr. Heinrich suggested that there is another way of tolerating billboards and in a way that Adams is willing to live with.

Ms. Denson-Rives re-approached the Plan Commission. She began her presentation by addressing some of the questions that the Plan Commission had asked of Mr. Myers earlier.

She talked about the Highway Beautification Act. The Act states that they must comply with an owner to receive full federal highway dollars. The reason this is important to the City of Urbana is because if the City were to amortize a sign or take a problematic sign down, then the State of Illinois could withhold federal highway money until such time that Urbana paid the just compensation. This is a very important point to remember as we talk about other things.

Regarding state and local compliance and the Fifth Amendment, she quoted that "No person shall be deprived of life, liberty or property without due process of law. Nor shall private property be taken for public use without just compensation." She stated that in 1971, the State of Illinois implemented the Highway Advertising Control Act, which says that if 50% of a structure

is damaged due to natural causes, then the company cannot replace the sign. As Mr. Heinrich had stated under Illinois law, just compensation for the removal of any signs would be required. Therefore, compensation would be due to both the land owner and the sign company for lost revenue.

On the topic of legally non-conforming issues, Ms. Denson-Rives stated that typical new land use rules and regulations affect the future use of land. Under the same definition, "legal non-conforming billboards" are billboards that do not conform to land use rules that have been enacted since the billboard had been erected at the site. In this case, the billboard has the right to be maintained as long as it does not become more non-conforming. Therefore, Adam's Outdoor Advertising would have the right to maintain any signs that are legally non-conforming.

She referred to a poster that showed where they were allowed to have signs and where Mr. Pope had previously agreed to not construct any billboards. Since IL Route 130 and US Route 150 are state highways, Adam's Outdoor Advertising should be allowed by right to build more billboards along these roads. However, they continue to honor the settlement agreement between Mr. Pope and the City of Urbana and to not build in those corridors.

According to her calculations, there are approximately 32 locations in the City of Urbana where new possible signs could be constructed due to zoning classification. However, zoning classification alone does not determine whether or not Adam's constructs a sign. They determine when a sign will be located in an area based on clear view, building setback, landscape in the right-of-way, if it would be an appropriate location to the traffic, and what makes sense in building Adam's business. Another thing that Adam's look at is the ability to negotiate a favorable lease for a site.

In looking at the 32 possible locations, immediately 10 of these locations would be taken out because of building setback, landscaping, or some other obstruction on the site. This leaves about 22 locations, half of which would not be favorable to lease. Therefore, there would be about 5 new locations in the City of Urbana to build new billboards on unless the City of Urbana expands their boundaries. This would not be anywhere near 122 possible sites as mentioned in the City staff report.

Ms. Denson-Rives referred to a poster that showed billboard locations under the existing ordinance and a poster that showed billboard locations if the proposed text amendment is approved. She mentioned that while the intent of the proposed text amendment is to enact an ordinance that would stop the proliferation of billboards, the proposed ordinance would basically stop any new sign structures.

Special use permits and the landscape standards mentioned in the proposed text amendment are problematic for Adam's Outdoor Advertising. The current proposed ordinance calls for 150 square feet of landscaping at any new site. In the 150 square feet of landscaping, she understood that they would have to plant 10 shrubs or 5 evergreens. This is a very large burden on a property owner to give up 150 square feet of land to landscape to offset for a billboard.

Adam's Outdoor Advertising has spoken with City staff and to the City Council in length about a cap and replace ordinance. This would allow Adam's to cap the number and have a one to one replacement ratio. So, they would not be allowed to build any additional new billboards. There are currently 39 existing billboards with 66 faces. They would be allowed to build a replacement billboard in exchange for taking a billboard down that is problematic for the City of Urbana.

Under a cap and replace ordinance, Adam's would be looking to partner with the City of Urbana. They believe this is an important aspect as they move forward. Adam's and the City of Urbana need to find ways to work together.

She discussed a couple of the problematic billboard sites for the City of Urbana. The first is located at the corner of Lincoln and University Avenues. She showed an illustration of how they could improve the aesthetics of the site. If the City of Urbana would be willing to take on some of the responsibility of the structure and Adam's would be willing to maintain the landscaping, they could basically present a very nice entryway into the City of Urbana.

The second problematic billboard site is at the corner of Vine Street and University Avenue. She admitted that the sign was not very attractive. Adam's has approached the City about redeveloping the site. They ran into some difficulty finding where the right-of-way lies in the Boneyard.

In closing, Ms. Denson-Rives stated that Adam's Outdoor Advertising recommends that the Plan Commission not accept the proposed text amendment and that they ask the Community Development Services Department to partner with Adam's and to craft a cap and replace ordinance. This would be the best use of time and resource for both parties involved.

Mr. Grosser asked if a cap and replace ordinance was implemented, would Adam's be willing to remove the existing billboard at the corner of Vine and Main Street. Ms. Denson-Rives said no.

Mr. Grosser inquired as to what she meant by cap and replace. Ms. Denson-Rives answered by saying that if Adam's were to find a location that made sense to relocate this billboard to, then they would look to do that. They would not, however, voluntarily take billboards down that people found unattractive. Their goal would be to maintain 39 billboard sites in Urbana at all times.

Chair Pollock closed the public input portion of the hearing.

Ms. Tyler commented that the City of Urbana has other signs that require special use permits so she did not feel that it would be discriminatory to have billboards require special use permits. The City is able to review special use permits by using good criteria as a guideline so there is some precedent there. City staff feels that requiring a special use permit for new billboards is very important to get the context sensitive treatment that would work in a location. Another reason to require a special use permit is that because of the high monetary value placed on specific sites it is important to get it right because a billboard could potentially be located in a site for a very long time. Therefore, they feel that special use permits are a valuable tool in addressing billboards.

In the period of proliferation that the City experienced, there were some problematic placements that a special use permit review could have detected, and the City's administrative review was not able to. This also showed City staff that our landscaping requirements were not effective. There have been some dangerous billboards erected, and they still stand today. There has been mitigation, but they have certainly harmed nearby properties. If the City would have had a chance to visualize the height, clear zone, surroundings, etc., then they could have made improvements through a special use permit process.

Regarding cap and replace, City staff has talked with the Plan Commission and City Council about this idea previously. Staff presented all the different alternatives. Cap and replace is not a path that City Council was ready to follow and this is known by Adams Outdoor. As a result, City staff has come back with a two-tiered approach as directed by the City Council.

Chair Pollock suggested that the Plan Commission continue this case at this time to the next scheduled meeting to be held on May 4, 2006. The Plan Commission agreed.

The Plan Commission took a short recess.

8. NEW BUSINESS

CCZBA-523-AT-2005 – Request by the Champaign County Zoning Administrator to amend the Champaign County Zoning Ordinance to add "Ethanol Manufacturing" and authorize by Special Use Permit only in the I-2, Heavy Industry Zoning District.

Mr. Wempe presented this case to the Plan Commission. He began by explaining the purpose for the proposed text amendment to the Champaign County Zoning Ordinance, which is to allow an ethanol plant by special use permit in the County I-2, Heavy Industry Zoning District. He talked about the important issues of a potential plant having access to large amounts of water, adequate wastewater disposal options, rail and interstate access, proximity to production inputs, adequate space for rail and truck traffic, and storage and loading facilities. He mentioned that a proposed ethanol facility would be located within the Extraterritorial Jurisdiction (ETJ) area of the City of Champaign on the west side. He reviewed the issues that Champaign County has and the issues that the City of Urbana has with the proposed text amendment. He read the options of the Plan Commission in this case and presented staff's recommendation, which was as follows:

> *In Champaign County ZBA Case No. 523-AT-2005, Urbana City staff recommended that the Plan Commission recommend that the City Council adopt a resolution of protest for the proposed text amendment due to the potential for environmental impacts within the ETJ and due to the lack of consistency with the City's planning and zoning regulations. This resolution of protest would be contingent upon inclusion of the following concerns:*
>
> *1. Require adequate setbacks around such facilities (e.g., 100 feet) as none are currently required.*

2. *Require a study of water usage impact to protect community water resources. The study should address how much water will be utilized and identify the impact upon public infrastructure and water sources.*
3. *Require a traffic impact study, including the potential for increased car and truck traffic, increased rail traffic, and safety of nearby crossings, and identifying necessary improvements to road conditions and strength. Measures to protect access to other existing uses in the area should be addressed. Road improvements necessary as a result of the proposal shall be funded by the project.*
4. *Require an emergency access and fire protection plan with review and approval by responding service providers.*
5. *Address impact of any connection to a municipal sanitary sewer. A sewer use permit from the Urbana-Champaign Sanitary District and connection permit from the IEPA shall be required, along with approval of the county or municipal engineer.*
6. *Require an odor control plan to protect receptors in the area. A "dry mill" process shall be used to minimize odors.*
7. *Require a water pollution control plan to demonstrate compliance with Clean Water Act, IEPA, and local regulations.*
8. *Require a dust and erosion control plan to demonstrate compliance with federal, state and local environmental laws.*
9. *Study and address noise impacts to protect receptors in the area. Mitigation measures shall be adopted to protect receptors.*

Mr. Wempe reminded the Plan Commission that if the City of Urbana approves a resolution of protest of the proposed text amendment, then it would force a three-quarter super majority vote for approval of the request at the County Board. City staff would like to have the leeway to negotiate these conditions with the County staff.

Mr. White commented that eight of the nine conditions would be eliminated because they would have already been done by the time The Andersons are granted permission to set up an ethanol plant. Mr. Wempe stated that staff had added the language to point out that the County should get copies of federal and state permits to insure compliance.

Mr. Grosser inquired as to what are the consequences of a water impact study. Simply having a study done is easy to accomplish. His concern is what happens based on the results of that study. Mr. Wempe replied that the study would outline specific measures that could be taken to mitigate any negative impacts. A petitioner would be required to implement the measures outlined in the study. Ms. Tyler stated that for example, there could be some water conservation measures introduced. The numbers that suggest the water use as a proportion of our whole municipal Champaign-Urbana use is very high and worrisome because we have the Mahomet Aquifer study underway and not yet completed. With the proposed conditions, there would at least some analysis conducted. Champaign County's recommendation was just focused on adjacent wells. The City of Urbana's conditions state that there is a broader environmental concern. Perhaps there are some ways to mitigate that usage if there is a problem.

Ms. Stake questioned how City staff saw the public being involved in this. Mr. Wempe answered by saying that if an ethanol plant requires a special use permit, then there would be meetings where people could testify. Mr. Myers added that special use permit applications at the County level go to the Champaign County Zoning Board of Appeals. There is a public process and public notification. The goal is to have full public knowledge as part of the decision making process.

Mr. Myers went on to explain the difference between the City's and the County's interpretations of the word "adjacent". The City often interprets "adjacent" to be across the street, but in a rural context adjacent water wells can be a half a mile away. There is a concern by The Andersons that if the language is too vague, then it might require the applicant to do a study of the entire Mahomet Aquifer. On the other hand, City staff certainly wants it to be larger than just 200 feet of the property.

The Andersons have pointed out that there would be monitoring wells surrounding the property to constantly check the water level and to monitor the changes in water level. They also pointed out that there may be a water conservation aspect of this because there are currently four wells which withdraw 500,000 to 600,000 gallons of water a day and pump this into the Kaskaskia River for the sole purpose of diluting waste being put into the river downstream in Tuscola.

Mr. White asked if The Andersons would treat their own waste water. Mr. Wempe said yes. There was a requirement to treat your own waste water on site.

Chair Pollock opened the public hearing up to hear testimony from the members of the audience.

Larry Wood, General Manager of The Andersons, stated that he has been involved in ethanol for the last six months. They currently have two ethanol plants under construction: one in Michigan and the other is in Indiana.

Everything mentioned in the County staff report is the standards that his company follows. They are currently monitoring wells out to a mile away from their current facilities. They would also have electronic monitoring systems on the perimeter wells that they put in place around their property. He mentioned that they would also be drawing water from about 350 feet down in the Mahomet Aquifer. There are three water levels to the Aquifer. The Andersons would have monitoring wells that would be watching the other two water levels (150 and 250 feet) as well to give them an early warning notice if a drawn down of water began to occur, because it would effect the neighboring wells. They wanted to be a good neighbor to the people around them.

The Anderson company has been in the community since 1968. They have been good corporate stewards since they located in the community, and they have brought a lot of revenue and raised the economy for many years. The impact of an ethanol plant would probably raise the value of corn by at least 10 cents a bushel. Champaign County produces about 50 million bushels of corn. So, that would be about $5 million in additional revenue that would be going into the County every year.

Mr. Wood went on to talk about the four wells on the west side of Champaign down along the Kaskaskia River. They pump out in excess of 500,000 gallons a day into the Kaskaskia. It changes from day to day depending on the need, because they have to have a certain amount of flow in the Kaskaskia in order to meet their dilution requirements in Tuscola. He was not sure how this was originally set up. The water that the Andersons would be putting back into the Kaskaskia after it went through their treatment process would mitigate the need to pump water from the four wells.

The Andersons have a hydrologist that works for them out of a large consulting company in Columbus, Ohio. The consulting company has studied the water all over the Midwest. The Mahomet Aquifer extends from the Illinois River on the west to the Illinois State line on the east side. It covers a fairly large area. Currently what is being drawn out of the Aquifer by both the public utilities as well as the private independent wells is estimated to be in the neighborhood of 80 to 90 million gallons of water a day. This information is documented in the County staff report. An ethanol plant would add about 2 million gallons to this number. It has been estimated that the Aquifer itself has the capacity on a day by day basis without affecting the water level to produce over 400 million gallons a day. Therefore, it currently was not even being used at 25% capacity.

One reason for ethanol use is because it is state mandated in some areas to reduce air pollution. The federal government is pushing it. Ethanol will never replace oil, but there will be at least one ethanol plant in this area regardless of where it goes. If the Andersons put an ethanol plant in, they will meet the standards that are set.

From a safety standpoint, the Andersons have a safety record that is number one in the country for all grain elevators. They have gone 14 years without a recordable accident, which is due to their safety programs that they have in place. They have been first in the country three times in the last six years of all grain elevators and grain processing facilities.

Regarding setback distances, Mr. Wood asked that they be reasonable. They asked that setbacks relate to the project and not to the parcel, because the Andersons will have multiple parcels upon which one ethanol plant would be located. They also asked for consideration for practical circumstances like proximity to rail and access. He noted that they have 120 acres. The proposed ethanol plant would only take up 40 acres.

Changing the wording from “adjacent” to “neighboring” does not make any difference to the Andersons. It is just a matter of semantics. They would be monitoring the wells and doing well surveys of the surrounding neighbors regardless.

Regarding traffic, what Champaign came up with for a traffic impact analysis was fine with the Andersons. They intended to do a traffic impact analysis anyway; because that is the only way they could get Illinois Department of Transportation (IDOT) funding for any upgrades or changes they need to make.

On the emergency issue, the Andersons did not have a problem with getting an emergency plan approved by Cornbelt or by the Champaign Fire Department. They currently have an emergency

action plan in place which is state required and will have one for whatever facilities that are located out there.

Mr. Wood mentioned that there will be no gravel roads. The current facilities are asphalted, and the proposed ethanol plant would be as well. In terms of dust, fugitive dust particularly, it would not be an issue. Dust control is monitored and is limited by the state to a maximum of 100 tons of dust per year. Both the existing facility, which is currently permitted as a synthetic minor, and the proposed ethanol plant would produce less than 100 tons of dust per year.

On the subject of sewer connection, if the Andersons would connect to a sewer system, any waste water discharge out of a facility like this would always be subject to Illinois Environmental Protection Agency (IEPA) approval. Therefore, he did not know why this was included as a condition. One reason for not connecting to a sewer system is because they would have to pump the waste water uphill over to where the Horizon Church is located. Instead, the waste water would be surface discharged into the Kaskaskia about a mile and a half away. They would still be regulated by the IEPA.

Concerning odor, thermal oxidizers are the latest technology for these types of plants and would be installed at the proposed ethanol plant. The thermal oxidizers destroy the volatile oils that come off and create an odor. Also, no one is building wet process mills anymore. The Andersons would be building a dry process mill.

Regarding erosion, they would have to meet the standards for the County in terms of stormwater. Every time they build something that is over a certain size, they have to make sure that they have provided detention ponds to manage stormwater. They currently have a retention pond that was basically designed for a 100-year flood.

In conclusion, several of the issues he mentioned are not an issue for them to have listed as a standard as part of the special use permit. They would prefer that the conditions not be on items that are already regulated or managed by the IEPA or by OSHA.

With regards to the alcohol itself, the Andersons must conform to the specifications for the Bureau of Alcohol, Tobacco and Firearms. The alcohol must be inedible when it leaves the facility.

Mr. White asked for clarification in that the Andersons did not have any problems with any of the recommended City staff conditions other than that some of them were already addressed through Federal and state laws. Mr. Wood said that was correct.

Ms. Stake inquired if the Andersons would get any subsidies from the Federal government for creating ethanol. Mr. Wood said no. The subsidies from the Federal government, with respect to alcohol, go to the blenders, who are the companies that blend ethanol with gasoline. The Andersons would produce ethanol and sell it on the market as raw ethanol.

Ms. Stake recalled Mr. Wood saying something about ethanol being state mandated. Mr. Wood stated that the Federal government was pushing the production of ethanol. The state government

is talking about providing incentives to build ethanol plants. The State is offering funds through the Department of Commerce and Economic Opportunity (DCEO) as grants to build ethanol plants.

He went on to say that there is a mandate by the Federal government. All of the gasoline that has been used in this country up to this point has been mixed with a type of oxygen called MTBE. MTBE has been banned by the federal government and by various states. However, there is still an oxygen requirement. This requirement is being fulfilled by ethanol.

Ms. Stake stated that the issue is that it will take six gallons of water to make one gallon of ethanol. In addition, we would need to subsidize it. We are so very fortunate to have the Mahomet Aquifer. In visioning for the future, we need to protect and save the water. Mr. Wood stated that his understanding is that the water level would be sustainable up to a usage of four times what is being taken out of it now. Ms. Stake said that is a little encouraging, but water is a scarce resource in the world and so is food. We should not be using all that water just to produce one gallon of ethanol.

Ms. Stake questioned what a dry mill process is. Mr. Wood explained that a dry mill process is where the corn is ground dry. A wet mill process is where the corn is soaked first so it bloats up with water before it is run through a chemical process.

Mr. Hopkins left around 11:15 p.m.

Ms. Stake inquired if the 100 tons of dust a year causes asthma. Mr. Wood did not believe so. Mr. Wempe added that this was the standard that the IEPA has for this type of permit. As Mr. Wood pointed out, they would be far below this standard.

Ms. Tyler stated that Mr. Wood raised some interesting facts and hypothesis with the water use. She believed it would be helpful for the Andersons to provide some of the hydrologist's reports regarding the Aquifer and any preliminary studies to the City Council should the Plan Commission forward this case on.

Regarding the nine conditions recommended by City staff, in suggesting these the City was responding to very specific conditions requested by the Champaign County Zoning Board as well as by the City of Champaign, but that seemed to miss other areas of impact. She did not have any doubt that the Anderson proposal would be state-of-the-art. As Mr. Wood has stated, they would have no problem meeting the regulations. The conditions recommended by Urbana City staff would be for any ethanol plant, not specifically for the Anderson's proposal. Therefore, there could be an ethanol plant that might use municipal facilities, for example. So, the City of Urbana wanted to make sure that they were covering all classifications and uses that may not already have the ability to work with the state.

Mr. Wood remarked that if the Andersons build an ethanol plant, then another ethanol plant would not be built in Champaign County because The Andersons would use up most all of the corn in Champaign County. However, if the City of Urbana makes it too strict, then the

Andersons won't build it; and then someone else will, and the City of Urbana will not have any control over it. Many of these conditions are already regulated.

Carl Webber, attorney for the Andersons, had difficulty if the special use permit would include items under the County's jurisdiction, which are under the expertise of other agencies. The Bureau of Alcohol, Tobacco and Firearms, the IEPA, the USEPA and OSHA all have certain provisions that the Andersons must follow. If these same provisions are written into the County's ordinance, then it puts the burden upon the County Planning and Zoning to assure that the provisions are being followed. If the County enforces the provisions in a wrong way, then the company has no way to complain about it because of governmental immunity.

Mr. Pollock said that the City was just asking for copies of the paperwork to make sure that the provisions of the other agencies were being met. Mr. Wempe said that was correct.

Mr. Webber remarked that the Andersons would be perfectly willing to send copies of the federal and state permits to the City or County. This was different than making it a provision of a special use permit. Mr. Ward commented that the language was clear in the City's staff report that the City only wanted demonstration on behalf of a petitioner for an ethanol plant that they comply with other agencies' provisions. This means send a copy of the certification that the petitioner is complying with the required provisions.

Mr. Webber argued that there could be a circumstance where there is an issue of whether or not a particular item was being complied with. IEPA may think that a petitioner is complying with something, and because of some political pressure or engineering concern, it was brought before the County, and then the County would be put in a position of being able to act as a mini IEPA. This is a big concern. Mr. Ward did not feel that the language says that. Mr. Webber remarked that as long it is does not say that, and then they do not care about the conditions. The Andersons want it worded so that it would not be questionable. Mr. Ward understood the language of the conditions to say that a petitioner for an ethanol plant would be required by federal and state law to comply with certain regulations. All the City of Urbana is asking for is some demonstration that a petitioner is complying with those regulations. A petitioner deals with IEPA. The County is not in the mix.

Mr. Webber asked Mr. Wood if he was willing to forward copies of all IEPA permits to Champaign County. Mr. Wood responded yes, however, all permits they would get from the IEPA or OSHA are posted in a public spot in their office.

Ms. Tyler commented that it has really helped the City in the past to have access to this information. Just to have the permits and the reports helps the City to interact with neighbors. The conditions would not pose any new regulations. It was really only a paperwork filing exercise. Mr. Myers added that the only condition that required review and approval was Condition #4, which states: *Require an emergency access and fire protection plan with review and approval by responding service providers.* Mr. Wood said that they do not mind this condition at all.

Chair Pollock closed the public input portion of the item.

Mr. Grosser mentioned that he liked having the conditions as part of the special use permit, because if a future ethanol plant was not in compliance, the special use permit would become void. It would be another level of control. Mr. Webber stated that this was the reason for his concern. There is a fine line of who enforces the regulations set by other agencies. If the County does not feel that a petitioner is in compliance, then they could revoke the special use permit, even though the other agencies say that the petitioner is in compliance.

Mr. Wempe stated that intent would be that the special use permit itself would be the proof that an ethanol plant was being in compliance with the other agencies revisions. The City of Urbana has had some special use permits under question of whether or not the holders of the special use permits were complying with the conditions of their permits. The City of Urbana did not immediately revoke the permit when they do an investigation. This is where the fine line is. The possibility of non-compliance would not result in revoking of a special use permit. Now if the IEPA revokes their permit, then the Andersons would be non-compliant with the County's special use permit, and the Andersons would lose the right to operate an ethanol plant. Obviously, the IEPA permit loss would shut down the business before Champaign County would.

Mr. White moved that the Plan Commission forward Plan Case CCZBA-523-AT-2005 to the City Council with a recommendation to adopt a resolution of protest with conditions 1-6. Due to lack of a second, the motion failed.

Mr. Ward moved that the Plan Commission forward Plan Case CCZBA-523-AT-2005 to the city Council with a recommendation to adopt a resolution of protest according to the staff recommendation including provisions 1-9. Mr. Grosser seconded the motion.

Mr. Webber wondered if implicit in the motion was the discussion about amending the wording of conditions 7, 8 and 9. Mr. Ward felt that the wording was quite clear to cover the discussion that took place. The language simply says to require demonstration of compliance, which would be the compliance certificate. Mr. Webber felt it would be better to say "Require evidence of a current permit". Mr. Ward believed that a permit was a demonstration of compliance.

Mr. White suggested an amendment to change the language in conditions 7, 8 and 9 to say "require evidence of a current permit" rather than "require demonstration of compliance". Mr. Ward and Mr. Grosser were comfortable with the amendment.

Mr. Grosser commented that the prospect of 2 million gallons of water per day is shocking to him. Certainly there is debate over whether 400 million gallons of water per day could be pumped out of the Mahomet Aquifer. The study is not complete, so no one knows for sure. The two natural amenities that the City of Urbana does have a nice beautiful big sky and deep aquifer full of water. The prospect of having an ethanol plant sucking all of the water out of the aquifer is disconcerting to him.

He certainly agrees with protesting the proposal as presented. His concern with the conditions placed on a special use permit for an ethanol plant is that there was nothing mentioned about the

outcome of the study of the Mahomet Aquifer if it is negative. While one would hope that a special use permit request for an ethanol plant would be denied, there would not be one single elected official to review the special use permit on the County level. This worried him as well. Therefore, he would support the motion, because he did not feel like he had any other option.

He understood the Andersons' point of view. They are established in the community and would build something state-of-the-art. However, the proposed text amendment would allow anyone to potentially build one. This was a concern as well.

Roll call was as follows:

Ms. Stake	-	Yes	Mr. Ward	-	Yes
Mr. White	-	Yes	Mr. Grosser	-	Yes
Mr. Pollock	-	Yes			

The motion was passed by unanimous vote.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

Ms. Tyler reported that the Zoning Ordinance Omnibus Amendment was approved by the City Council by a vote of 7-0 at the last meeting.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

Chair Pollock adjourned the meeting at 11:42 p.m.

Respectfully submitted,

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Robert Myers, AICP, Planning Division Manager
Urbana Plan Commission