

MINUTES OF A REGULAR MEETING

URBANA PLAN COMMISSION

APPROVED

DATE: May 4, 2006

TIME: 7:30 P.M.

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

MEMBERS PRESENT: Jane Burris, Laurie Goscha, Ben Grosser, Lew Hopkins, Michael Pollock, Bernadine Stake, James Ward, Don White

MEMBERS EXCUSED: Marilyn Upah-Bant

STAFF PRESENT: Jim Gitz, City Attorney; Elizabeth Tyler, Director of Community Development Services; Robert Myers, Planning Manager; Teri Andel, Planning Secretary

OTHERS PRESENT: Lisa Denson-Rives, Fred Heinrich, Susan Taylor

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

Mr. Grosser moved to approve the minutes from the April 20, 2006 Plan Commission meeting with one correction. The correction being that Jim Gitz, City Attorney is added to the list of Staff Present. Ms. Stake seconded the motion. The minutes were approved as corrected by unanimous voice vote.

4. WRITTEN COMMUNICATIONS

- Staff Memo on Billboard Examples
- Folder of Information from Adams Outdoor Advertising regarding Plan Case No. 1988-T-06
- Copy of the Planning Commissioners Journal

5. CONTINUED PUBLIC HEARINGS

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

Elizabeth Tyler, Director of Community Development Services, stated that at the previous meeting City staff had finished their presentation, and representatives from Adams Outdoor Advertising had made a short statement. Due to the meeting running late, Plan Commission had not had an opportunity to discuss the case. With the exception of the folder of information handed out from Adams Outdoor Advertising prior to the start of this meeting, City staff had not received any other communications.

Robert Myers, Planning Manager, began by handing out a staff memo illustrating some billboard examples. He mentioned that he had shown the illustrations in the memo on the overhead screen at the previous meeting. He felt that these illustrations showed some of the issues that the City staff is concerned about.

In terms of billboards, the City is concerned with several aspects including aesthetics, economic development and safety. The first photo, located on page 1, incorporates these issues. The existing billboard, located on North Cunningham Avenue, has been problematic in the City's economic development efforts for North Cunningham Avenue, as well as with traffic safety and issuance of permits (overlapping jurisdiction between state and city permits).

The height of the billboard blocks the view of the neighboring business. The Longhorn Smokehouse had been relocated there using Tax Increment Financing (TIF) money. The City has been trying to encourage this local business to grow and has been trying to help the redevelopment of the North Cunningham Avenue corridor. Shortly after the Longhorn Smokehouse moved to this location, the billboard was constructed which blocks the view of their sign for cars driving south from the interstate. After the billboard was constructed, it was discovered that it could be seen from Interstate 74, which is not allowed under the state's standards for billboards. Therefore, Adams lowered the billboard. Since then, the billboard has created many problems including traffic safety. Approximately six cars have hit the billboard structure because it is located in a parking lot. Finally, parking spaces underneath were taken out and a curb was constructed in front of the billboard.

The second photo, located on page 2, is of a billboard located on Neil Street in Champaign. It illustrates an issue of interfering with traffic circulation and parking for a future business building currently under construction.

The third and fourth photos, located on page 3, illustrated several principles of good design and represents what City staff would like to see with new and existing billboards. He pointed out that attached to the staff memo are a copy of a *News-Gazette* article and a copy of the letter from the Illinois Department of Transportation (IDOT) regarding the billboard on North Cunningham Avenue.

In giving a brief overview, Mr. Myers explained that City staff was concerned that the current Zoning Ordinance is inadequate in terms of dealing with aesthetics, economic development and safety. Staff is also concerned about proliferation as well. Theoretically, staff calculated that there could be 122 new billboards constructed under our current regulations. However as a practicality, there could not be that many built because this does not take into account factors such as property owners who may not wish to lease for a billboard. One of the ways the City staff proposes to deal with proliferation is to increase the amount of distance required between billboards. Staff proposes to increase it from 300 feet to 1,500 feet.

Mr. White questioned how many companies there were that owned billboards in Urbana. Mr. Myers answered by saying until recently that there were two companies, Adams Outdoor Advertising and Redfish Advertising. Adams Outdoor Advertising just purchased Redfish Advertising.

Mr. White inquired about billboards within Urbana's extra-territorial jurisdiction (ETJ) area. Mr. Myers did not know if Redfish sold all of their billboard sites in the ETJ to Adams. Mr. White was concerned about the billboard along Windsor Road near the entrance to Stone Creek Subdivision. He mentioned that the sign was located near the road in a cornfield. If a developer comes along and wants to build a housing development, then the billboard would present an obstacle.

Champaign County Zoning Ordinance requires 1,000 feet between billboards. The City needs to work out something so that we don't end up with billboards that are being constructed in the County being annexed into the City and becoming non-conforming structures that are located too close together, obstruct views and potentially impact economic development. Mr. Myers commented that Champaign County has its own standards. Within the ETJ, the City has subdivision review; however, subdivision review does not include billboard standards. So, in order to accomplish the goal Mr. White recommended, the City would need to work with Champaign County to change their standards for billboards.

Ms. Stake wondered if the City had a definition for "abandonment". Mr. Myers asked if she was thinking in terms of a billboard not being used or in terms of a billboard having been removed. Ms. Stake said that she was talking about an existing billboard that was not being used or maintained. Mr. Myers stated that City staff did not include any such definition in the proposed text amendment. Conversely, the section in the Zoning Ordinance regarding non-conforming uses does deal with the question of abandonment. He pointed out that the issue of billboard faces not being used might have been resolved when Adams purchased the inventory of Redfish Advertising. Redfish did not have their billboard faces rented, and he was not aware of any of Adam's billboard faces that are not rented. Ms. Tyler noted that it was Article X of the Zoning Ordinance that talks about non-conforming uses. Section X-9 speaks about non-conforming signs. There are tests for billboards and buildings for when to consider them to be non-conforming or abandoned.

Mr. Grosser referred to a previous question asked of Jim Gitz, City Attorney, in the last meeting regarding whether Section X.9.C.1 requires removal of non-conforming signs after five to ten years. He asked Mr. Gitz if he had a chance to review this. Mr. Gitz asked for a moment.

Mr. Ward remarked that the billboard on North Cunningham Avenue appeared to create a major detriment to local business development in a TIF zone. He asked if the billboard was allowed under the existing Zoning Ordinance, because the Zoning Ordinance did not have a minimum height. Mr. Myers said that is correct. City staff believes that the existing Zoning Ordinance was inadequate to do what the community would like to achieve in terms of billboards. Mr. Ward commented that the billboard on North Cunningham Avenue was a blatant example of where the City should be able to deal with the situation because it is a detriment to local business and therefore a detriment to the general welfare of the community.

Mr. Ward went on to ask if the minimum height being proposed in the text amendment would deal with a similar situation should it occur again. Mr. Myers replied yes. City staff was trying to achieve billboards that are sensitive to their context. So in terms of blocking businesses and sites, safety, and impediments for circulation of traffic underneath and around a sign, the height of a sign would need to be set in the context of its neighboring businesses.

Mr. Ward stated that he liked the City memo because it showed an example of a billboard that was clearly problematic, and it shows examples of other billboards that meet the City's requirements. It was not a matter of being against billboards or a matter of being against a particular company. It is a matter of obtaining a design that meets the City's requirements. What in the proposed text amendment would prevent the design of the billboard on North Cunningham Avenue from occurring again? Mr. Myers responded by saying that City staff was proposing a minimum height for traffic safety and also a special use permit process be required for all new billboards. The purpose of requiring a special use permit process would be so that the City would have a chance to review plans for building future billboard structures and make sure their design is context sensitive.

Mr. Ward understood that with some fairly minor changes in the Zoning Ordinance, the City would be able to set some minimal standards that would meet the City's needs and would be able to provide flexibility for future billboards to be congruent with the context. He did not feel that the City would be setting a hard and fast rule that would be unchangeable. Through the special use permit process, the City would look at the context of a future billboard. Mr. Myers pointed out that there would be some hard standards involved in the special use permit process, but in addition to that there would be criteria to serve as a guideline to meet public interest.

Mr. Myers continued by saying that this would be an additional process for billboard applications than what exists currently. Therefore, it would take additional time to go through the special use permit process. Mr. Ward commented that it would not be something that would take up a lot of time for City staff because he didn't anticipate very many billboard applications each year.

Ms. Tyler mentioned that City staff continues to monitor the billboard on North Cunningham Avenue. Staff had requested abatement as a safety hazard. If it becomes a safety hazard again or if not all of the issues have been dealt with, then staff would continue to abate the sign structure under the provisions of the Zoning Ordinance.

She went on to say that City staff believes that if a special use permit would have been required, then staff would have had the information to detect the problem that emerged. As it was staff was not able to detect any problems. As a result, staff got into a jurisdictional issue with IDOT. What was built was not what the City anticipated. City staff had to come in after the fact and abate the situation, which was not ideal. She was not 100% satisfied that all issues with this sign have been remedied, although it is getting there.

Regarding questions asked of him at the last meeting, Mr. Gitz stated that he was in the process of preparing a written memo to the Plan Commission on two aspects. The first aspect is a special use permit question, and the second was in terms of variance. He mentioned that a special use permit and a variance request are treated differently in terms of the law.

He commented that he has some concerns about Section X-9, and he preferred to relay these concerns in a specific communication to the Plan Commission. Section X-9 relates to non-conforming signs. He felt the key would be how non-conformity signs would work in practice. He stated that if the City would use the Zoning Ordinance to establish a sign structure as being legally non-conforming and then end up applying it in a way that would basically eliminate the sign as opposed to bringing it into conformance, then he felt there were some issues to be concerned about. On the other hand, if the City utilizes the Zoning Ordinance in a manner where it fits an entire zoning scheme without trying to abolish the existing signs, but rather bring about compliance, then they could do so without any difficulties.

Mr. Pollock asked if it was Mr. Gitz's recommendation that the Plan Commission delay making a decision until they received the memo from Mr. Gitz. Mr. Gitz replied that it was the choice of the Plan Commission. Ms. Tyler noted that the Plan Commission could continue the case till the next scheduled meeting. However, after the next scheduled meeting, there may be competition from other cases with construction season starting. Therefore, it would be great to complete the case at the next Plan Commission meeting. This would allow the City Council two meetings to address the issue before the moratorium expires.

Mr. White inquired as to how many signs existed that are considered non-conforming uses because they did not conform to the provisions of Article IX as of January 6, 1980 as mentioned in Section X-9.A. Ms. Tyler replied that there were a lot of older signs. The way you tell an older sign is if it is in the setback. A newer sign would be 50 square feet and out of the setback. She guessed that 30% of the billboard signs were not fully conforming.

Mr. White stated that he believed there would be two classes of non-conforming signs if the City approves the proposed text amendment. One class would be the signs that did not conform to the provision of Article IX as of January 6, 1980, and the second class of non-conforming signs would be the signs that becoming non-conforming because of the proposed text amendment. Would both classes of non-conforming signs be treated the same in terms of how they could be repaired and replaced? Ms. Tyler commented that there would be more classes than the two. The other classes are not addressed in Section X-9 specifically and discreetly. The City has recently made changes to the Sign Ordinance that would create nonconformities. The City would possibly create more nonconformities for the property signs. They have made changes to projecting signs that may have created nonconformities. Mr. Myers added that it was even more

complicated than this. After the Zoning Ordinance provisions concerning nonconforming signs was adopted, there have been some changes in state law. There is a provision in state law that says that cities requiring billboards to be removed through eminent domain must provide just compensation. This is a state law that deals specifically with billboards. Whether or not amortization is just compensation is still up in the air as court cases have ruled both ways. There may be state laws and case laws since the Section X-9 was adopted that would affect how signs are treated in terms of non-conformities.

Mr. White understood that the City of Urbana had regulations in force in 1980 on billboards. So, there were signs that became non-conforming because of these regulations. Then the State of Illinois passed legislation that indicated that just because a non-conforming sign fell into disrepair, it did not mean that the billboard would have to be removed. Did these legislations apply to billboards built from that time forth or did the City's regulations that were adopted in 1980 have any weight? Which law applies and when?

Mr. Gitz stated that in 1993 there was an amendment to the state laws regarding compensation. It specifically indicated that billboards fell within the eminent domain statute for just compensation. He was not aware of any court decision in the State of Illinois or any other jurisdiction that distinguishes between different kinds of billboards and when they were originally installed. The argument that has been in light of that is a number of different jurisdictions in the Chicago area and down state have begun to look at amortization as a way of providing just compensation. However, about two years ago, there was the Lamar case which indicated that amortization was not enough. A more recent case involving Oak Brook Terrace, there is a question of whether it will be appealed to the Illinois Supreme Court. He believed it would. This case was even clearer on the issue that amortization would not constitute just compensation. Mr. Gitz has not observed to date that there was any distinction made to the age of signs. A more proper question would be whether one could have a continuing legally non-conforming variance.

Mr. Myers stated that the intent of the proposed text amendment is to be prospective and look toward future billboards rather than existing ones. City staff's goal is to try to bring reasonable standards in place for future billboards.

Mr. Grosser recalled that billboards were not allowed along the Route 130 and Route 150 corridors as part of the C & U Poster settlement agreement. Adams Outdoor Advertising is contending that the City of Urbana is in violation of the agreement. Should the City be worrying about billboards popping up on Route 130 and Route 150? Mr. Gitz stated that this was a legitimate concern. The City could not argue on one hand that the settlement agreement resolved the issues and they are gone, then turn around and say that there is an agreement in place for these routes. The City needs to declare itself one way or another on the settlement agreement. We need to make provisions in our Zoning Ordinance as to how we will approach those issues or we have to agree with Adams that the settlement agreement is binding.

Mr. Grosser inquired if the Zoning Ordinance said anything about Route 130 and Route 150. Mr. Myers answered that billboards are not currently allowed on Route 130 and City staff is not proposing to change that.

Mr. Myers went on to say that City staff is trying to get through the moratorium and move forward. The longer we have to extend the moratorium, the less defensible it is. A moratorium is not supposed to be forever. It is suppose to meet certain needs and goals and then be removed.

The moratorium specifically mentions the advisability of a cap and replace program. Basically, a cap and replace program would allow non-conforming billboards to be replaced with new billboards meeting the new standards in other locations of the City. The negative side would be that it would allow billboards in new places where they are not currently allowed. Is this acceptable? He believes that the City Council does not find a cap and replace program acceptable because it would allow billboards in new areas.

The proposed text amendment would continue to prohibit billboards on Route 130. And the new ordinance would omit any future billboards from being allowed in the segment on Vine Street between downtown and University Avenue. City staff also proposed to remove new billboards from being constructed in the B-4 Central Business Zoning District.

Mr. Grosser questioned whether staff had considered when looking at the map to disallow billboards east of Smith Road. Mr. Myers said that this is something that had not been discussed.

Mr. Hopkins wondered where the official statement of acceptable corridors is located. Ms. Tyler pointed out that the acceptable zoning districts were listed in Table IX-5. Standards for Outdoor Advertising Sign Structures found on page 169 of the Zoning Ordinance under Location and Separation of OASS.

Mr. Hopkins expressed concern about 660 feet, which is equivalent to 1/8 of a mile. Mr. Myers stated 660 feet is the standard used by IDOT, and City staff tried to dovetail IDOT's standards because that is where IDOT's jurisdiction lies principally in that area. IDOT has certain standards for billboards within and beyond 660 feet. Mr. Hopkins stated that would include Downtown Urbana. Mr. Meyers pointed out that there would be other standards as well, such as what zoning district billboards are allowed in. There would be a layering of requirements. There would be certain corridors that billboards would be allowed along, plus billboards would only be allowed in certain zoning districts, plus billboards could be no closer than "X" number of feet from a residential zoning district.

Mr. White asked if there would be no increase in the number of billboards with a cap and replace program. Mr. Myers replied that there were several different ways a cap and replace program could be written. It could be written so that it would allow an increase or a decrease or with no increase or decrease at all. Adams Outdoor Advertising is suggesting a cap and replace program so that there would be no additional billboards built in the community. Billboards could be relocated throughout the community and the old ones which were being replaced would be removed.

Mr. White stated that under a cap and replace program, if a property owner leases the land to Adams, and if Adams then removes their billboard from the property, the property owner would not be allowed to lease their property to another billboard company. Therefore, the property owner's right to the income stream would be taken away by the cap and replace ordinance. Mr.

Myers remarked that he did not know the details of a lease between a property owner and a billboard company such as Adams Outdoor Advertising. He thought that there might be provisions in a lease for buyout of leases, etc. Mr. White pointed out that the billboard company would not be the ones changing the Zoning Ordinance to a cap and replace program. So the City would be the responsible party for the land owner from allowing another billboard company to come in and have a sign there. Mr. Pollock clarified that this argument was that property owners would be negatively affected more than the billboard company by a cap and replace program.

Mr. White remarked that if Adams Outdoor Advertising owns all of the billboards in the community, then another billboard company could not build any additional billboards under the cap and replace program. Adams Outdoor Advertising would have a monopoly on the billboard business. Mr. Myers agreed that it would be a side-effect of a cap and replace program.

Mr. Gitz commented that a monopoly could be created by limiting the absolute number of signs. He was not aware of any court that has ruled that there was an absolute right to be in the billboard sign business and have many signs simply in the interest of commerce. Courts from the Supreme Court to every jurisdiction have recognized that there are First Amendment issues. Billboards are a form of speech that poses its own special problems as a medium and whether or not there is a legitimate right for local regulations.

Mr. White remarked that he found the free speech argument for billboards is seriously flawed. He could decide not to buy a newspaper or not to pick up a magazine. However, he has to drive by billboards. Mr. Gitz stated that he would not necessarily disagree with this. However, the recent Supreme Court cases in the last twenty years have steadily expanded the reach of the First Amendment into commercial speech. Although the courts still recognize legitimate rights to regulate, commercial speech has been elevated in terms of its command of some protection in the public medium.

Mr. Hopkins understood this conversation was brought up as a response to whether the City pass a cap and replace program without being challenged for creating a monopoly. Because of the First Amendment arguments, the City could probably pass a cap and replace program. Mr. Gitz said that he did not feel that the Plan Commission did not to be much concerned about the effect of a cap and replace program and limiting the absolute number of billboard signs and facing some type of a legal challenge to that form of commerce.

Mr. Hopkins asked if City staff knew anything in general terms about the market for outdoor advertising signs. Does City staff know about the nature of leases, options, rights to continue or stop a lease? How long are the leases? How much are the leases? These properties affect tremendously how the world would respond to the kind of ordinances that they were talking about writing. Ms. Tyler responded by saying that City staff does not have a lot of this information which is a handicap for the City. Much of the information of this type that the City staff does have has come from land owners wanting to get input from the City as to whether or not they should lease out their property for another term. City staff really does not have good data on the form of the different leases. Mr. Hopkins stated that he had forgotten about the Planning Advisory Service Report that deals with this issue. Ms. Tyler replied that there was definitely continuing advice to planners on how to deal with the issues of billboards, which are

going on all over the country. The stakes are escalating and the strategies are changing almost daily.

Mr. Gitz suggested that the Plan Commission pose this question to Adams Outdoor Advertising. He mentioned that the just compensation law for billboards was brought to the legislature for amendment. It was brought in response to the fact that many municipalities have wanted to limit or eliminate signs. Because there is an issue that amortization may or may not qualify for compensation, billboard companies are entering into long-term leases with property owners. This way if a municipality is required to do a full buyout by the traditional terms of compensation, then it becomes hugely expensive and almost prohibitive to do so, which is part of the intended strategy to begin with.

Mr. Ward asked if in a compensation issue would the compensation legislation deal with both the land owner and the sign company. If the City of Urbana adopted a cap and replace program, would we be creating an economic loss for the land owner if an existing sign were replaced and relocated to another site for which the City would have any exposure for compensation? Mr. Gitz stated that he wanted to spend more time researching this before answering this question.

Chair Pollock opened the hearing up for public testimony.

Lisa Denson-Rives, representative of Adams Outdoor Advertising, and Fred Heinrich, Attorney for Adams Outdoor Advertising, approached the Plan Commission.

Ms. Denson-Rives mentioned that Adams recently had an acquisition, and they now own the Redfish inventory. She hopes that the City notices a great change in the inventory since Adams took control of it in that it is now being utilized.

She went on to talk about the proposed spacing of 1,500 feet between billboards. She referred to a map in the folder of information that Adams had passed out prior to the start of this meeting. The map shows what 1,500 feet spacing would allow. The proposed spacing change will make it so that there will be no new locations where billboards could go into the market place. There are approximately 22 locations where billboards could currently be constructed. These places would only be possible if a lease could be obtained, Adams could meet all the setbacks and requirements, and go through the special use permit process. So basically there were not any properties to put new billboards on.

Mr. Pollock inquired as to how they went from 22 potential properties to none. Ms. Denson-Rives remarked that the possibility of getting a lease for the 22 potential properties would be difficult. They might get leases for 10%, which would be 2 properties. These two properties would have to meet the setback requirements and still provide clear view from the street, so there probably would not be any properties to place new billboards on. This is based on Adams professional opinion and what they have seen happen in the market place.

Mr. Heinrich spoke about Adams purchasing the Redfish inventory. He felt this is a significant development for the City of Urbana's perspective. Many of the complaints that he has heard has been in regards to the lack of use of the Redfish sign faces and lack of responsiveness in some

cases to the City's requests or concerns. Adams has demonstrated for a number of years that it has attempted to be very responsive to concerns brought up by both the City of Urbana and the City of Champaign.

Mr. Pollock inquired if the billboard sign shown in photo #1 of the current staff memo was a sign previously owned by Redfish Advertising or has Adams always owned the sign. Ms. Denson-Rives mentioned that it has always been an Adams sign. Mr. Heinrich added that everyone sees situations differently. The sign on North Cunningham was used as an example of something that has been problematic in terms of economic development. He commented that Hickory River Smokehouse is booming. So in terms of the sign affecting the business, he found it hard to believe. He could believe that the owners of Hickory River Smokehouse do not like the sign.

He went on to say that Adams would have left the sign at the normal height of a billboard sign, but in order to meet the regulations of IDOT they had to lower it. It was never Adam's intention for the sign to be built at the height it is now. But he did not want anyone to believe that it is somehow an illegal sign. Adams has been talking with City staff about resolving the issues that the City has with the sign. Although the issues may not have been resolved as quickly as the City would like, but efforts have been made to try to resolve the issues. Ms. Denson-Rives noted that Adams has put in an additional \$4,000 of landscaping into the site to rectify the problems with the height of the billboard.

Regarding the second photo of a billboard sign on North Neil Street, Mr. Heinrich said that City staff had been used as an example of how a sign can affect economic development. He submitted that developers were not in the business of losing money. Real estate development is a high stakes game. The developer responsible for constructing the new building behind the sign would not be constructing the building if he thought the existing billboard sign would be a major impediment to his development. So he looks at the photo and sees a different picture.

Adams has been responsive to concerns on behalf of the City, which are proliferation, context of the area in which a sign structure is built, and design elements. The cap and replace concept would generally meet these concerns. Adams has indicated again and again its willingness to deal with specific issues and specific signs. Adams is the only player in the billboard market place right now, and they are willing to try to resolve issues as they come up. There are other ways of resolving the political issue without going to the lengths that the proposed text amendment does.

Ms. Denson-Rives pointed out that the routes that are listed in the current Zoning Ordinance are routes that came out of the C & U Settlement Agreement. By right in the State of Illinois, a billboard company has the ability to build on any state route. If Adams and the City of Urbana go away from the settlement agreement to a new ordinance, then it would be opening up Route 150, Route 130, Route 10, and Route 45 to future OASS development.

She stated that in the folder of information, there is a copy of the sign ordinance from Cincinnati, Ohio. This ordinance has worked well for them. It covers the number of signs and the square footage that would be required. It would allow for a one-to-one replacement.

Under the cap and replace program, Adams would be able to do two things. One of the first goals of the City Council as presented in a meeting with them was that the Council would like to not see any more billboards being built in the City of Urbana. The other thing that the Council would like to achieve is beautification in the City of Urbana and to talk about the removal of specific signs. By enacting a cap and replace ordinance, Adams could look specifically at the signs that the City of Urbana has deemed problematic, and they could negotiate how those might be redeveloped at other locations that have similar DEC's and similar revenue streams so that they could work together in a partnership agreement.

Mr. Heinrich addressed a question from Mr. White regarding whether or not a cap and replace ordinance might leave the City open to a claim by a property owner. From a practical standpoint, he suspected that a billboard company would not remove or suggest moving a sign structure to another location unless it was at the end of a lease term or at a point in time at which they had to exercise an option and chose not to exercise that option. In terms of causation, it would be a stretch for someone to claim that the City's ordinance caused them economic damage. He had a difficult time seeing how a land owner at the end of a lease term or before an option to renew the lease was exercised could claim damages as a result of the City's ordinances.

Ms. Denson-Rives mentioned that she also added some information to the folder regarding non-conforming signs and sign structures. This information came from the Illinois Administrative Code. This is important because billboards are protected differently under the IDOT Administrative Code in the State of Illinois. Even though a billboard is non-conforming or becomes non-conforming because of a text amendment to the sign ordinance, it still has the right to remain at the location indefinitely. The only time that a billboard would be required to come down is if through an act of nature it was damaged beyond 50%. 50% means 50% of the uprights were damaged. Then, Adams would be required to remove a billboard if it were on a state route. If the City requires a billboard to be taken down, then Adams would look at how they would be compensated for the income stream that they would lose.

With exception to a few other billboard companies that have come and gone, Adams has been the major billboard company in Champaign-Urbana. They have always tried to have a very good partnership with both the City of Champaign and the City of Urbana. Adams tries to run their business in a way that the employees try to do what is best for the community. Their goal to always partner with the City is never going to leave as long as Adams is located here. This is why a cap and replace ordinance is a win-win situation for both the City of Urbana and for Adams Outdoor Advertising. This is the best way to approach development as the city grows and moves forward.

Mr. Ward understood the petitioner to say that if Adams has a lease with a property owner in the City of Urbana that expires and Adams decides not to renew the lease, under cap and replace the land owner cannot lease the property to any other billboard company because Adams owns all of the allowable billboards, then the land owner has not suffered an economic loss. Ms. Denson-Rives responded by saying that Adams retains the ownership of an entire sign structure placed on a land owner's property. At the end of a lease term, if the land owner and Adams cannot agree on a new lease term or Adams chooses not to enter into a new lease agreement, then Adams

would remove the sign structure at their cost and either relocate it to a new site or retire the sign structure.

Mr. Ward understood what she said. However, a land owner could no longer earn income from leasing to another billboard company because of the cap and replace program. As a result, the land owner has lost the previous use of the property. It would seem to him that the land owner would suffer an economic loss. Would the land owner have any recourse against the City in terms of economic lost because of the cap and replace program? Mr. Heinrich replied that the land owner would not be in a different position than any other land owner under the proposed ordinance that does not have a right to put a billboard on his or her property because of spacing requirements or any other requirements. It would be totally speculative to say that something has been removed from a land owner, which they do not have. The land owner has a potential right to get a new lease with perhaps another billboard company. Once a billboard is removed, then nothing would be taken from the land owner that exists at that time.

Mr. Hopkins said that it seemed to him that something else was going on with the cap and replace program. Normally eminent domain takes the property and not the lease rights. He recalled that Mr. Heinrich had stated that a billboard company would not take action, except at the end of an option or at the end of a lease period. If Adams is at the end of a lease period, then the eminent domain payment for the right for the billboard goes to the land owner, not to Adams Outdoor Advertising. In other words, the land owner could go to the City of Urbana and say the lease with Adams is up. Rather than take what might be offered from Adams to renew their lease agreement, the land owner might chose to take an offer from the City of Urbana and allow the City to buy them out. Under a cap and replace program, Adams would have essentially captured the right, since they are a monopoly, to relocate signs and to keep the number of signs that they have. So, if the City wanted to buy any of the signs out, then the City would have to buy it from Adams. It seems to him to be a taking of property that otherwise would belong to the property owner at that point. It would also be a bad idea from a market point-of-view for the City of Urbana because it would force us to bargain with the only sign owner who has a monopoly that the City created.

Mr. Heinrich did not see the monopoly that the City felt they were creating any different under a cap and replace program than it would be under the proposed text amendment. The proposed ordinance would provide very few new buildable sites. From a practical standpoint, either scenario would create a monopoly for Adams.

He did not look at "monopoly" as being a pejorative term. He looks at Adams ability to interact. He has not heard any negative comments about Adams or about Adams flexing its monopolistic muscles anywhere in the City. Mr. Hopkins agreed that a monopoly was not inherently bad. He is only trying to do the analysis of what the effect is on the market. He also agreed that the property owner does not have any more right under a regulation based on spacing. But the City is in a very different position in terms of the market it is in to buy out the rights to have signs through eminent domain. So, he could not see a reason why the City on its own initiative would create an ordinance against its own economic interest. He suggested that the City regulate and regulate in particular ways for particular purposes. The City's choice among regulations actually affects how the City would be able to bargain with whom and whom has what rights at what

points at times when leases are up and options are up. The City is going to regulate somehow. It is a question of how and what the benefits are.

Mr. Heinrich remarked that if a cap and replace program was in place and it was not at the end of a lease term, if an alternative location is available and acceptable to Adams and they remove a sign from an existing location, then Adams has a duty to fulfill its lease obligations. It would not be the City's obligations. Adams would have to structure a buyout with the lessor. Whether it would come to a present cash value of the future income stream or whether they would continue to pay rent over a period of time, that lessor would have to be compensated by Adams. Mr. Hopkins stated that was his point. The City would have no opportunity to enter the market with both of the other parties to either acquire property either from a voluntary willing seller or through eminent domain. Just as Mr. Heinrich said, Adams has taken on all of the responsibility for paying for, managing and shifting from one place to another all of the rights to outdoor advertising signs in the City.

Mr. White pointed out that the discussion on cap and replace is not necessary. He suggested that they end all conversation regarding cap and replace.

Chair Pollock interjected by saying that this is an opportunity for members of the public to address the Plan Commission on the proposed ordinance. If the interested party would like to explain their alternative vision of the proposed ordinance, then they should be allowed to do so.

Mr. Grosser clarified that under the cap and replace program that Adams suggested there would only be 39 billboards. He felt that there was a contradiction, because with the proposed ordinance, Adams claims to only be able to have 39 signs. So, the total number of signs would be the same. The difference is that some of the signs might potentially be relocated under a cap and replace program. He wondered what it is about the proposed ordinance that Adams did not like. Ms. Denson-Rives replied that under the proposed text amendment 1,500 foot spacing would make it impossible to find another location for a new billboard in the City. Cap and replace would offer Adams the ability to work with the City of Urbana to move the signs that the City finds problematic, such as the one at Blockbuster at the intersection of Vine Street and University Avenue. Adams would look to possibly relocate the sign at 1710 North Cunningham Avenue if they could find a compatible location. They have talked about becoming partners with the City of Urbana to beautify the entry known at the corner of Lincoln and University Avenues. Under the proposed ordinance, there is no incentive for Adams to do anything but maintain the inventory that they have. Adams is trying to show the City an alternative way that this could be a win-win situation for Adams and for the City of Urbana rather than have an adversarial relationship forever.

Mr. Grosser questioned if Adams would be looking at a different amount of income because of relocating a sign. Ms. Denson-Rives said yes. Locations in new commercial development would be more profitable for Adams than some of the locations that they currently hold.

Mr. Pollock commented that the City could write a cap and replace ordinance in a lot of different ways. Would Adams prefer that the City write an ordinance so that the decision to move a sign from one spot to another would be a joint decision between the City and Adams Outdoor

Advertising? Or would Adams assume that it should be their right to move signs based on business decisions as long as the total number of billboards do not increase? Ms. Denson-Rives stated that Adams would expect an ordinance to be on the books that would allow Adams to develop by right, but Adams would entertain additional landscape requirements to move a sign to a new location in order that those would be attached to the relocation. As she mentioned before at the previous meeting, Adams would maintain an inventory with the City of Urbana that would be a 1 to 1 replacement. When a sign was relocated, Adams would have 30 days after the time that the new site was placed to remove an old sign structure, so that the total number of billboards would always be 39. Mr. Heinrich stated that the City would still have some permitting requirements, which would be in place for a new location. So the City would always have some say. Chair Pollock added that there was the possibility that the City could have a cap and replace program along with a special use permit process requirement.

Mr. Grosser clarified that Adams believes 1,500 feet is objectionable in the proposed ordinance because it makes it so they think that they could not build any additional signs. Ms. Denson-Rives stated that it would basically leave no place to build a sign. Every available corridor that they could build on is taken with the exception of Route 130 and Route 150. Mr. Grosser asked if there would be a number of feet that Adams would be happier with. Ms. Denson-Rives said that Adams would accept 600 feet.

Mr. Grosser inquired if there was anything else in the proposed ordinance other than the number of feet required between billboards that Adams opposed. Ms. Denson-Rives stated that it depends on what the outcome of the ordinance is. If the special use permit process stays as a portion of the permitting process, then that leaves Adams with a lot less predictability and a lot less enthusiasm about accepting some stricter guidelines. If Adams and the City could come to some agreement about what the guidelines would be and not have to go through the special use permit process, then Adams would be willing to talk about a lot more stringent guidelines in an ordinance that would be published. The special use permit process is so subjective. There really are no rules. Mr. Grosser pointed out that there are specific criteria for how the City evaluates special use permit requests. Ms. Denson-Rives commented that every time the Plan Commission or the City Council turns over, then Adams is dealing with a whole new set of criteria based on how a group of people interpret what special use means. Chair Pollock said that was correct. In essence, a special use permit gives the City Council and the Plan Commission the right to impose certain restrictions based on what they feel is the best community. Ms. Denson-Rives noted that if Adams is found in non-conformance of a special use permit, then the City could require Adams to remove the sign. Who determines what is out of conformance? If the grass is two inches too long, then would they be out of conformance and would they lose their permit? If the City does not like the sign color, would Adams lose their permit?

Ms. Tyler defended special use permits by saying that there are so many uses in the City that are permitted with conditional or special uses, and the City is not in the business of yanking these permits. Conditional and special use permits are granted reasonably with reasonable conditions monthly by the City. The process works very well. There is hardly a case where the project is not improved with a special use permit. It is a way for the City to examine what is being proposed and to let the neighbors know what is going on. There are many communities where essentially every use and every development is a special type of use, because it gives the

municipalities that public opportunity to review things and make sure that they are the best that they can be. Many times it is for the petitioner's advantage as well. So, it is a very valuable tool, and it is not abused.

Ms. Tyler went on to comment on the business of Hickory River. While it may very well be that Hickory River Smokehouse is successful in business, they were very distressed by the placement of the billboard on the neighboring property. One of their points is that Adam's billboard is 300 square feet. Hickory River was only permitted a 50 square foot sign, and they feel that the billboard blocks their business. And even though they may be doing well, we have no way of knowing how super fantastically they might have been doing if that sign did not block visibility. So there is a very obvious equity issue that Hickory River felt. In looking at our goals in the City of Urbana, we have our redevelopment plans that we are trying to bring forward on Cunningham Avenue, University Avenue and Downtown Urbana. To the extent that these signs interfere with that redevelopment, it is not assisting those larger efforts.

The City had a battle on North Cunningham Avenue. It was an issue with the business owners too as the City worked with the neighborhood business group in that the billboard company was approaching neighboring businesses saying, "Who wants the lease? If you don't get the lease, then your neighbors are going to get it, and the billboard will block your business." It was a crazy situation. How can the City ever redevelop Cunningham Avenue when we cannot consolidate lots because lots cannot be combined because there is an impediment where there was not? There is a solution that will help to protect these redevelopment opportunities and to protect the property owners' rights. When a property owner leases land to Adams for a billboard site, then the 300 feet kicks in and no one else has the opportunity. One possible solution is to say that billboards are a business unto themselves. They do not pay property tax. They do not participate and bring customers in the way Hickory River does. A property owner is looking for income on your property, so your property can only be used for a billboard with no other principal use. This is a tool that the City could use to approach these issues in terms of property owner rights and redevelopment opportunities.

Mr. Gitz did not want the Plan Commission to get the impression that the special use permit process would somehow allow arbitrary and capricious decision making. If the City tries to evoke someone's special use permit because of the length of the grass or the color of the sign, then they have a real problem. Also this is not an arbitrary process. There are criteria. Admittedly, there could be some subjectivity as to how the criteria are applied. To shorten the amount of distance between signs would actually increase the advisability of having a special use permit process, not decrease it.

Ms. Stake wondered if the photo of the billboard on North Lincoln Avenue had been taken before Adams invested an additional \$4,000 on landscaping. Ms. Denson-Rives stated that the photo included the additional landscaping. Ms. Stake commented that she did not see much landscaping. Ms. Denson-Rives pointed out that the bottom of the sign originally was not bordered by a concrete border. The grass area under the billboard is additional landscaping that Adams planted in order to direct traffic flow in the parking lot around the board and to create a buffer around the board to resolve the safety issues. Ms. Stake said that she thinks of

landscaping as being trees and bushes. Ms. Denson-Rives pointed out that Adams had installed bushes on the west side of the billboard, which was required as part of their permit application.

Mr. Pollock closed the public portion of the hearing. He inquired if the Plan Commission wanted to open the case up for Plan Commission discussion or to continue the case to the next scheduled meeting.

Mr. Grosser stated that he asked Adams about whether or not they could place billboards along Route 130, and their reply was that state law would allow them to build there. If the proposed ordinance says that they cannot build on Route 130, then which rules is Adams suppose to follow? Mr. Gitz responded by saying that it depends on the interplay with home rule and whether it gives way to the state law that Adams cited under the Illinois Administrative Code. He would like to research this further.

Mr. Hopkins commented in that interpretation presumably where there are already state routes in the City, then the City must have the right to regulate them or there would be no reason why we would be talking about the proposed ordinance. The proposed ordinance talks about regulating billboards on Route 45 and Route 150.

He went on talk about billboards being considered primary use, secondary use, and OASS as land use. Are the leases actually of parcels? Ms. Tyler said that the parcels were not subdivided lots. They are just descriptions and lease arrangements for the most part. Some of the older billboards are remnant pieces and might stand on their own with some pre-existing semi-legitimate land holding. Most of the recent ones would be just a lease agreement with a land owner and just part of a lot. Earlier she was talking about principal use with connote the creation of a stand alone lot. Mr. Hopkins stated then that the ones along Philo Road north of Florida Avenue might be sitting on a parcel that has no other primary use.

He asked when the City defines the set of use categories in which billboards would be permitted, rather than by saying these are the categories of land use zones in which billboards are permitted could the City do that definition by defining billboards as a primary or a secondary use in those zones? Ms. Tyler answered by saying that the City could in theory place OASS in our Table of Uses as a principle use. This is one suggestion that had been discussed early on in this process. It had been put forward by the former City Attorney. They had discussed the pros and cons associated with this.

Mr. Hopkins questioned whether there was some simple summary as to why staff is not proposing to do it this way now. Ms. Tyler replied that it may be that Mr. Gitz wants to study it further. At the time, City staff felt that there could be some unintended consequences in terms of peculiar subdivisions being brought forward and perhaps some other situation where we could in fact have a subdivision of billboards. It is possible. It would all depend on what the highest and best use is in the market, and there may be some locations where billboards could be built on a lot. These are improvements that are not taxed the way other improvements are. Mr. Hopkins remarked that they could also be subject to special use permit as use categories.

Ms. Stake inquired since billboards are a business, then why aren't they taxed like other businesses? Mr. Myers responded by saying that the answer may lie in whether a billboard is considered to be real property or personal property. Ms. Stake asked if the parcel of land is taxed. Mr. Myers replied yes.

Chair Pollock questioned whether the Plan Commission wanted to proceed with the public hearing or continue the meeting to the next scheduled Plan Commission meeting. Mr. Grosser stated that it made sense for the Plan Commission to wait for further communications from Mr. Gitz because his communications will affect the Plan Commission's discussion. Ms. Stake agreed. With no objections from the other Plan Commission members, Chair Pollock carried this case over to the next scheduled meeting on May 18th.

6. OLD BUSINESS

There was none.

7. NEW PUBLIC HEARINGS

There were none.

8. NEW BUSINESS

There was none.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

Mr. Myers reported on the following:

- Text Amendment Omnibus to the Zoning Ordinance was approved by City Council.

Ms. Tyler reported on the following:

- Ethanol Text Amendment to the Champaign County Zoning Ordinance was approved by City Council in a substantially different form. It was an extension of some of the discussion that was had at the Plan Commission level.
- The Ameren IP/ CellNet Special Use Permit is being held over for up to another 30 days. City Council requested that City staff negotiate with Ameren IP on the potential for screening on the north and west sides of the substation as a whole.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

Chair Pollock adjourned the meeting at 9:27 p.m.

Respectfully submitted,

Robert Myers, AICP, Planning Division Manager
Urbana Plan Commission