

MINUTES OF A REGULAR MEETING

URBANA PLAN COMMISSION

APPROVED

DATE: September 20, 2007

TIME: 7:30 P.M.

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

MEMBERS PRESENT: Jane Burris, Ben Grosser, Michael Pollock, Bernadine Stake, Marilyn Upah-Bant

MEMBERS EXCUSED: Tyler Fitch, Lew Hopkins, James Ward, Don White

STAFF PRESENT: Robert Myers, Planning Manager; Teri Andel, Planning Secretary

OTHERS PRESENT: Lois Arciszewski, David Krchak, Lisa Denson-Rives, Glenn Stanko, 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 present.

2. CHANGES TO THE AGENDA

There were none.

3. APPROVAL OF MINUTES

Ms. Upah-Bant moved to approve the minutes from the July 19, 2007 Plan Commission meeting as presented. Ms. Stake seconded the motion. The minutes were approved by unanimous voice vote as presented.

4. COMMUNICATIONS

- ◆ Map of Proposed Tax Increment District #3
- ◆ Map of the Cunningham Avenue Corridor Redevelopment Plan

5. CONTINUED PUBLIC HEARINGS

There were none.

6. OLD BUSINESS

There was none.

7. NEW PUBLIC HEARINGS

Plan Case No. 2050-T-07: An Application by the Urbana Zoning Administrator to amend the Urbana Zoning Ordinance pertaining to signs and Outdoor Advertising Sign Structures (OASS), specifically Section VII-11, Special Use Requirements for OASS; Article IX, Comprehensive Sign Regulations; and Article X, Non-Conformities.

Robert Myers, Planning Manager, gave the staff presentation for this case to the Plan Commission. He began with a brief explanation of the packet information that was mailed out to the Plan Commission members prior to the meeting. He pointed out that Attachment A is a cleaned up version of the ordinance including the proposed changes, and Attachment B is an underline and strike out version.

He presented background information on the history of sign regulation amendments and their results. He gave an overview of the proposed changes in the text amendment that is before the Plan Commission during this public hearing. These changes include reorganization, content neutral, commercial versus non-commercial speech, equal protection, due process, design criteria, redevelopment impacts, and nonconforming billboards.

Mr. Myers noted what the proposed sign and billboard ordinance amendment would not do. These include the following:

1. The minimum spacing distance between new billboards would remain at 1,500 feet.
2. The number of rows per corridor and the distance to residential property would remain the same.
3. Digital billboards would remain prohibited.
4. The list of traffic corridors where billboards could be placed would remain unchanged.
5. The ordinance would not cap the number of billboards. As the city's corporate limits grow there would be some opportunities for new billboards.
6. All signs and billboards newly erected, relocated, or structurally altered would still have to obtain a permit to do so.

He read the options of the Plan Commission and stated that City staff is recommending approval of the proposed text amendment. He recognized all the parties that have been helpful to City staff in creating the proposed text amendment. They are David Krchak, Attorney at Law from Champaign, City of Urbana Legal Department, Professor Daniel Mandelker of Washington University Law School, Glenn Stanko and Adams Outdoor Advertising.

Ms. Upah-Bant stated that she could not find Section VII-11 in either the proposed Zoning Ordinance amendment or in the newly adopted text amendments in April of 2006. She wondered what had changed that would allow administrative review of billboards. Also, what was the process prior to the moratorium? Mr. Myers replied that prior to the moratorium there was not a special use permit process. The process was similar to the proposed text amendment in terms of there being standards that had to be met and there being an administrative review process.

Regarding Section VII-11, it is shown on Page 1 of Attachment B. He noted that this section was added in the amendment of 2006. City staff is now proposing to strike this out of the ordinance, because it is no longer necessary in light of the concrete standards that are being proposed in the current text amendment.

Chair Pollock inquired if the concrete standards that City staff would use to administratively review future billboard applications have been written as of yet. Mr. Myers answered by saying that the standards were incorporated into the proposed text amendment.

Chair Pollock wondered what would happen if a lot of land gets annexed into the City. Is future billboard construction based on the zoning district and whether or not a particular area has a prohibition? If it doesn't, then is the land open for billboard development? Mr. Myers replied that if the proposed text amendment is adopted, then future billboard developments would have to meet all of the standards of the Zoning Ordinance, including the spacing requirements, the minimal distance requirements from residential, etc. If a future billboard development falls within 660 feet of a state highway or interstate, then the billboard company would also need to get a permit from the Illinois Department of Transportation.

Chair Pollock asked if that included Route 130. Mr. Myers replied that under the City's current Zoning Ordinance, billboard development is not allowed in the Route 130 corridor. City staff is not proposing to change this.

Chair Pollock inquired if the proposed ordinance is set up with certain areas that are prohibited rather than areas where billboard development would be allowed. Mr. Myers pointed out that Section IX-6.D.1 states permitted OASS locations.

Chair Pollock wondered if any newly annexed land not mentioned in Section IX-6.D.1 would not be available for billboard development. Mr. Myers replied yes.

Ms. Burris commented that this is a contradiction to an earlier comment made by Mr. Myers. If newly annexed land that is not mentioned in Section IX-6.D.1 would not be available for billboard development, then how would annexing property into the City allow for additional billboards to be created? Chair Pollock answered by saying that newly annexed land that is part of the corridors mentioned in Section IX-6.D.1 would provide additional development sites for billboards. Mr. Myers added that if the City grows towards the east down the Interstate 74 corridor or to the north along Cunningham Avenue, there may very well be new opportunities for billboard development if they meet the requirements of the Zoning Ordinance. Lincoln Avenue is going to be extended and straightened. Olympian Drive, at some point in time, is going to be extended east and west. Someday, these areas will be more viable than they are now and provide for billboard growth.

Ms. Stake questioned why denial of a billboard permit would be sent to the Zoning Board of Appeals rather than to the City Council. Mr. Myers explained that the Zoning Board of Appeals is set up to take appeals. The reason for this is because the Zoning Board of Appeals is set up for quasi-judicial review similar to a court. They swear in witnesses, take testimony, and allow cross examination.

Ms. Stake wondered what would make a person or company want to appeal. Mr. Myers replied that if either a person applying for a billboard permit or a property owner where a proposed billboard would be located felt that the rules were not interpreted correctly by the Zoning Administrator, then they would have the opportunity to appeal. Every city government has an appeals process. Ms. Stake commented that it seems to her that the City Council would know more about the rules and regulations for signs than the Zoning Board of Appeals.

Mr. Grosser asked how an “aggrieved person” is defined. Is it anybody who defines themselves as aggrieved? Or are there some particular criteria for this? Mr. Myers believed there are criteria, but he would need to speak to the City’s Legal Department to get advice on how to answer this question.

With no further questions from the Plan Commission for City staff, Chair Pollock opened up the public hearing to listen to public comment.

Lois Arciszewski, Real Estate Manager with Adams Outdoor Advertising, stated that the focus of her responsibility is new development of billboards. Outdoor advertising is a medium or form of communication. As Mr. Myers previously mentioned, it is not only commercial, but non-commercial as well. Non-commercial messages could be political advertising, public service advertising, or religious advertising. The conveyances of both commercial and non-commercial messages are protected under the First Amendment. Non-commercial advertising messages are particularly suited to Outdoor Advertising Sign Structures (OASS). By definition, an OASS advertises a product or service not located on the land parcel where the sign structure is. Therefore, one could see how non-commercial messages are conducive to off premise signs as opposed to on premise signs, which advertise the business located on the lot. She displayed photographs of non-commercial billboard messages that have recently run or are running in the City of Urbana.

Ms. Arciszewski talked about the factors that determine a potential billboard site. These factors include a city’s sign ordinance, which is the rules and regulations that the company must work under first. Adams Outdoor Advertising realizes and respects that it is a city’s objective to protect the city and in particular to protect its residential districts. Other variables that go into potential billboard sites are physical feasibility, sales demand, visual obstructions, power lines, natural topography, access to the property, etc, but first and foremost, they have to have a willing land owner. Out of 8 to 10 potential sites, they will only be able to construct one billboard. Therefore, the process is time consuming and expensive and full of pitfalls. She asked the Plan Commission to keep in mind the many variables that affect the construction of a billboard.

She mentioned that the City staff and Adams Outdoor Advertising Sign Company have been working together on the proposed text amendment. She feels that we have made progress; however, there are four points of disagreement, which are as follows:

1. Spacing between billboards. City staff recommends in the proposed text amendment maintaining 1,500 feet. Adams Outdoor Advertising recommends 750 feet.
2. Route 130 Corridor. No billboards are currently allowed in this area. Adams Outdoor Advertising is asking that the Plan Commission consider this roadway...keeping in mind everything she just mentioned about the variables required to build a billboard and the City's regulations regarding distance to another billboard, distance to a residential district, and the zoning.
3. Distance to a residential district. Adams Outdoor Advertising respects that the City's responsibility is to protect their residential districts. However, they are asking that the City consider measuring the same side of the roadway only. For example, if they are considering a potential billboard location on the east side of the road, then they are asking the City to look at the distance to a residential district on the east side of the road.
4. Tax Increment Financing (TIF) Districts. Adams Outdoor Advertising is asking that the City not exclude these districts from potential billboard development. She believes that land owners should be the ones to decide if they want a billboard development to be part of the redevelopment of their land.

Lisa Denson-Rives, of Adams Outdoor Advertising, clarified that the State of Illinois is a bonus state which we enter into with the Federal government. Part of the highway dollars that the Federal government gives to the State of Illinois comes to us because we participate in the bonus state. This means that in order to build a billboard on a regulated interstate in Illinois, one would have to find a parcel zoned commercial and prove the commercial use back to September 21, 1959, which is not easy. Champaign County did not even have zoning until 1974. So, even as the City of Urbana grows along the Interstate 74 corridor, the potential for Adams to build new billboards along this route is very limited, if not almost impossible.

Glenn Stanko, Attorney from Champaign representing Adams Outdoor Advertising, stated that he represents Adams in the litigation against the City of Urbana, which was filed about a year ago. After Adams filed the litigation, the City brought in David Krchak as outside counsel. The City then decided to go back and take another look at the Zoning Ordinance and to allow Adams to give some input along the way. He feels that they have made some reasonable progress.

For now, Adams Outdoor Advertising has put the lawsuit on hold. The focus has been more on getting an ordinance that the City is satisfied with and that Adams feels that they can operate under. He believes that some of the changes have resulted in more objective criteria, which was one of Adam's major concerns.

Mr. Stanko mentioned that Adams is supportive of the proposed text amendment. The four recommendations that Ms. Arciszewski had highlighted are for the Plan Commission to consider and hopefully recommend some modification of the proposed text amendment to the City Council.

First, he talked specifically about the TIF District exclusion. He referred to Page 15 of Attachment B under Section 1.c. He mentioned that this was not part of the amendment passed in 2006. This is a recent add on and is not part of the original lawsuit filed about a year ago.

He passed out copies of two maps. The first map is of the Proposed Tax Increment District #3, and the second map is of the Cunningham Avenue Corridor Redevelopment Plan.

Chair Pollock inquired if there is a specific prohibition for billboards in the downtown area. Mr. Myers replied yes. The amendment of 2006 also changed the ordinance to no longer allow billboards along Vine Street south of University Avenue.

Chair Pollock then asked if when talking about TIF Districts that would be excluded from billboard development means TIF Districts outside of the downtown area. Mr. Myers said that is correct. Mr. Stanko added that they were talking about TIF Districts #3 and #4.

Mr. Stanko stated that when looking at Cunningham Avenue most of the properties are in the TIF District #4, which means that they have the potential to be excluded as billboard development sites. The proposed text amendment lists the Cunningham Avenue corridor as a place for potential billboard growth, but then takes that potential away with the TIF District exclusion in Section 1.c on Page 15 of Attachment B.

The same goes for University Avenue. There is a hotel on W. University Avenue that has a redevelopment agreement with the City of Urbana, so it would be excluded from being a potential billboard development site. Therefore, Adams Outdoor Advertising feels that the decision should be left up to the developer in these areas.

Regarding the 300-foot limitation of a billboard being developed near a residential area, he did not realize this would be an issue until a few days ago. Unfortunately, this is not something that Adams Outdoor Advertising and their attorneys have had an opportunity to sit down with City staff and talk about. He mentioned that the requirement used to be 50-feet before the June 2006 text amendment. When it became 300 feet in the 2006 text amendment, Adams read it to mean that the measurement would be the same way the measurement is made between billboards, which is from the centerline of the highway on the nearest point and measure 300 feet in either direction. They also thought the intent was for it to be measured on the same side of the street. However, City staff apparently intends a radial measurement. If any residential, agricultural or conservation-recreation-education (CRE) Zoning Districts are within 300 feet any direction of a proposed billboard site, then it would not be allowed. This could be a barrier for potential billboards. Therefore, he feels that the City needs to look at this and make some changes to this regulation in Section 1.a on Page 15 of Attachment B regarding how it is to be measured.

The 1500-foot spacing distance between billboards was a very drastic change in the 2006 text amendment, and it can be found in Section 2 on Page 15 of Attachment B. It was only 300 feet between billboards before. It really precludes a limited growing of the business.

When the City staff mapped potential locations for billboards, they found four sites available. Of these four new possible locations, three are located on North Lincoln Avenue where a person would not really think about putting billboards at this time, because the development there would not justify it. The fourth site is located on E. University Avenue near the Urbana Post Office. This could be problematic, because Beringer Commons, which is zoned residential, is located nearby. Northeast of the site is zoned agriculture.

Mr. Stanko figured that if the 1,500-foot regulation was reduced to 1,200 feet, then it would provide seven additional possible sites. 1000 feet would provide 11 new sites, and 750 feet would provide 15 potential sites, which is what Adams is recommending. Fifteen is not very many potential new sites, because close to half of them would be knocked out with the other problems.

Finally, regarding Route 130, billboard ordinances are typically geared to allow billboards to be constructed along state and federal highways within 660 feet. Sign companies have to deal with the State of Illinois Department of Transportation to get permits for billboard development along these routes. Adams Outdoor Advertising is asking for a chance to develop what limited opportunities there would be along Route 130 south of University Avenue. It is all dependent on the zoning, which there is a little bit of business zoning in different spots along this route. Many of the properties are still zoned County AG.

Mr. Stanko summarized by saying that he wanted to explain why Adams Outdoor Advertising felt that the ordinance is not workable. The TIF exclusion has the potential to swallow what was given in the first place, the 300-foot residential/agriculture/CRE radial dimension takes away many possible opportunities, the required separation distance between billboards gives very little opportunity for development, and Route 130 would give them a little more opportunity as well. These are the four ways that he asked the Plan Commission to consider tweaking the proposed text amendment. They are supportive of the other things in the proposed text amendment.

With no further comments from the public, Chair Pollock reopened the public hearing for the Plan Commission to ask questions of City staff.

Ms. Stake inquired if the proposed language regarding an appeal was existing language or is it being added. Mr. Myers stated that City staff is trying to be more specific in the appeal process. Professor Mandelker feels that this is important.

Ms. Stake questioned if there are any appeals of City laws that go to the City Council. Mr. Myers said that he is not aware of any appeals that go before City Council. Most go to the Zoning Board of Appeals.

Ms. Burris asked for an explanation of the 300-foot requirement and the 1,500-foot requirement. Mr. Myers explained that in 2006 when the billboard ordinance was changed, the City had went through a period of billboard proliferation, where there had been nine additional billboards constructed during a two year period. As a result, City staff felt the 1,500-foot spacing requirement between billboards would help deal with this issue. Staff first looked at how many more billboards would be allowed in the City under the ordinance at that time, and they found that there could be about 122 more billboards developed. City staff also researched other cities' billboard regulations in Champaign County and elsewhere. They found that the Village of Savoy has a 1,500-foot distance requirement. City staff felt that 1,500 feet was right because it dealt with potential proliferation but allow some limited growth for billboard companies.

Mr. Myers went on to explain that when City staff proposed changing the 50 feet to 300 feet requirement from any residential, agriculture, or CRE zoned areas back in June of 2006, staff chose 300 feet in order to better protect the public interest. Most people would not want to look out their window at home and see a billboard 50 feet away.

He stated that he understands Adams' concern about how the 300 feet is measured. It does make a difference. He had always thought about the measurement in terms of how far are you away from backing up to a residential area rather than how far up and down the corridor a residential area is located. He believes it would be wise to clarify how the 300 feet is measured and what it really means.

Ms. Upah-Bant inquired as to why the TIF District exclusion added. What is staff's concern regarding this? Mr. Myers stated that City staff has had an ongoing concern and has discussed this for years. In the corridors that the City Council has designated as TIF Districts, there is a public interest in revitalizing these corridors. The entire City has a stake in how and if these corridors succeed or fail. Although it rationally makes sense to allow billboard development along the edges of vacant sites, City staff realized that those vacant lots might not always be vacant, and we did not want billboards to impede the success of future businesses on vacant lots. City staff wants to make sure that these sites have the best opportunity to be successfully developed or redeveloped.

Ms. Upah-Bant asked about spacing requirements in other Illinois cities. Mr. Myers replied that the City has researched this question extensively. Other cities have different spacing requirements based on their own specific set of circumstances. He did not recall what each city's requirements were, but he would be happy to get that information for the Plan Commission.

Ms. Upah-Bant inquired as to what the City of Champaign's spacing requirement is. Robert Myers asked Ms. Denson-Rives for this information and she stated that it is 300 feet.

Chair Pollock asked for clarification regarding the TIF District exclusion. When you say that any property under a development agreement is excluded, does the development agreement run in perpetuity with the land or in perpetuity with the development project? Or does the development agreement expire after a development is constructed? Mr. Myers explained that the TIF Districts themselves have a lifespan of 10 to 25 years. They are all different. Redevelopment and development agreements are also for specific time periods. There are standards that have to be met as well for the development agreements.

Chair Pollock used the Farm and Fleet and the O'Brien Auto Park developments as examples. These two projects were done under development agreements, and they are located in a TIF District. The TIF District will eventually expire. Will the development agreements that preclude the placing of billboards in this area ever expire? Mr. Myers said yes. Chair Pollock questioned if the agreements would expire when the TIF District expires or when. Mr. Myers stated that it is in each individual agreement as to when a development agreement expires. Chair Pollock asked if a development agreement could go longer than the TIF District. Mr. Myers said he did not know. Chair Pollock suggested that he might check into this.

With no further questions for City staff and no further comments from City staff, Chair Pollock closed the public input portion of the hearing and opened it up for Plan Commission discussion, motions and debate.

Ms. Stake moved that the Plan Commission forward this case to the City Council with a recommendation for approval as presented. Ms. Burris seconded the motion.

Mr. Grosser stated that he is supportive of most of the provisions of the proposed text amendment, but one item he is not supportive of is the removal of Section VII-11 which requires a special use permit review for every future billboard. He recalled having extensive discussions back in April of 2006 regarding this issue. One of the issues that is well supported by the Comprehensive Plan is whether or not something is compatible with the surrounding neighborhood. While Adams Outdoor Advertising is claiming that Section VII-11 is not fair, he would tend to think that there is nothing more fair than noticing the property owners who might live near a potential billboard, having a public meeting at the Plan Commission where these people and the petitioner can voice their opinions, and having a meeting where the City Council can hold public discussions. There are a number of other types of uses in a number of zoning districts that require special use permits. There is nothing wrong with special use permit review. The City very specifically put it in this ordinance back in June of 2006 to prevent situations from coming up without the opportunity for the Plan Commission and the City Council to review it.

Mr. Grosser moved a friendly amendment to restore the stricken language in Section VII-11 as written in the previous version of the ordinance and to have any corrections made to the new language that relied upon the removal of this section and put in its place language about administrative review. The amendment was accepted as a friendly amendment by both the motion maker and the seconder.

Ms. Burris commented that as she reads through Section VII-11, she notices conflicts with including it as it is currently written in that it does not keep the content neutral for both the City and a petitioner. She feels that she would need to see the language written out and how it would be incorporated so that it would not be offensive in any way and not come back to bite them in court.

Mr. Grosser appreciated Ms. Burris' concern. He believed that she is mainly concerned with Section VII-11.A and with whether a proposed OASS is going to be aesthetically compatible and sensitive to its context. To him, there is a clear difference between content neutral and the content of the language on a sign and whether or not something is compatible aesthetically with its surroundings. It is within the Plan Commission's purview to be evaluating whether or not something is aesthetically compatible with the surroundings, and this is what the Comprehensive Plan guides them to do.

Chair Pollock asked if it is fair to assume that the removal of the special use permit process has legal implications of some kind. Mr. Myers replied yes. Section VII-11 is proposed to be removed and replaced with objective standards. One reason is very good legal advice from Dr. Mandelker. Dr. Mandelker felt that having the special use provisions in the billboard code weakens the code rather than strengthens it. He also questions if having discretion in the process could be considered a prior restraint on free speech.

Chair Pollock commented that while at some point he is certainly not unwilling to talk about this, based on legal considerations and the fact that the Plan Commission does not have all of the information that they need, he could not support the friendly amendment.

Ms. Upah- Bant commented that she would want to see the language written out as well before she votes on it.

Chair Pollock called for a hand vote on the friendly amendment. The friendly amendment failed by a motion of 2 – 3.

Ms. Upah-Bant stated that she would like to change the spacing limit to 750, which is twice the limit that Champaign has. She feels this would be adequate. She would also like the language to stipulate the method to measure the distance between billboard and residential areas to be on the same side of the street and not radial. She mentioned that she is also curious why billboards are excluded from being developed along Route 130. Mr. Myers responded by saying that Route 130 has never been a corridor that is permitted for billboards. City staff is just not proposing to add it as a new corridor at this time.

Chair Pollock preferred to send this back to City staff with anything that the Plan Commission might consider changing within the proposed draft and with a number of questions. Any changes would require legal review, because the City is in the middle of litigation on these issues. The Plan Commission’s posed the following points of discussion:

1. Reducing the required distance between billboards to 750 feet;
2. Measuring 300-feet from potential billboards to residential areas on one side of the street or perhaps keeping it a radial measurement but lowering the distance required;
3. Question about any interest in opening Route 130 up to allow billboards (include research as to how many billboards this would allow);
4. Questions about the limits of development agreements – Do they run with the TIF District? When do development agreements expire? When does the TIF Districts expire?

Ms. Burris opposes everything Ms. Upah-Bant suggested. She does not want to drop the distance between billboards any less than 1,200 feet. Also she does not like thinking about seeing a billboard outside her window; therefore, she does not feel that the distance between billboards and residential areas should be reduced.

Mr. Grosser agreed with the 1,500 feet distance between billboards. He pointed out that the whole point of rewriting the ordinance in 2006 was to reduce proliferation of billboards. He believed that 300 feet radius is the logical way to measure the distance from a billboard to a residential area. Excluding Route 130 from potential billboard development goes back to the idea of trying to reduce the proliferation of billboards.

Ms. Stake felt that the Plan Commission should send the proposed text amendment back to City staff to look at some of these issues.

Roll call on the motion to forward this case to the City Council with a recommendation for approval was as follows:

Ms. Burris	-	Yes	Mr. Grosser	-	No
Mr. Pollock	-	No	Ms. Stake	-	No
Ms. Upah-Bant	-	No			

The motion failed by a vote of 1 – 4.

Ms. Stake moved to send the proposed text amendment back to City staff to address the Plan Commission's concerns and questions. Ms. Upah-Bant seconded the motion.

Ms. Upah-Bant suggested that staff also add Section VII-11 back into the ordinance. With a majority of the members present interested in this, Chair Pollock asked City staff to revisit this idea.

Chair Pollock called for a hand vote on the motion. The motion was passed by unanimous vote.

8. NEW BUSINESS

There was none.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

Mr. Myers reported on the following:

- Sigma Nu Fraternity Rezoning case was withdrawn by Sterling Management. Therefore the case was not heard by City Council.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

The meeting was adjourned at 9:32 p.m.

Respectfully submitted,

Robert Myers, AICP
Secretary, Urbana Plan Commission