

MINUTES OF A REGULAR MEETING

URBANA PLAN COMMISSION

APPROVED

DATE: October 4, 2007

TIME: 7:30 P.M.

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

MEMBERS PRESENT: Jane Burris, Tyler Fitch, Ben Grosser, Lew Hopkins, Michael Pollock, Bernadine Stake, Marilyn Upah-Bant, James Ward, Don White

MEMBERS EXCUSED: There were none

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

Mr. Myers suggested that the Plan Commission move Item # 4 – Communications to be discussed some time after Item # 5 – Continued Public Hearings. With no objections from the Plan Commission members, Chair Pollock agreed to the suggestion.

3. APPROVAL OF MINUTES

There were no minutes available to review.

4. COMMUNICATIONS

- ◆ Staff Report for Plan Case No. 2023-T-06 to the City Council regarding Neighborhood Conservation Districts

5. CONTINUED 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, began the staff presentation by reviewing the five aspects of the proposed sign and billboard code text amendments that the Plan Commission members had requested further information on at the previous meeting. These five items are as follows:

1. Study changing the minimum spacing requirements for billboards from 1,500 feet (current standard) to 750 feet.
2. Reexamine the requirement that new billboards be placed no closer than 300 feet from any residential, AG or CRE Zoning District.
3. Consider whether to add IL Route 130 as an allowable corridor for erection of billboards.
4. Provide background information about redevelopment agreements in Tax Increment Finance (TIF) Districts, such as when TIF Districts and redevelopment agreements expire.
5. Consider maintaining the existing Special Use Permit (SUP) requirement for approval of new billboard permits.

He discussed each item beginning with the billboard separation requirements. He noted the billboard spacing requirements in other Champaign County jurisdictions. He stated that it is City staff's intention to change the distance between billboards to prevent billboard proliferation without over reaching. City staff is not trying to eliminate billboards as a means of communication. There will be opportunities for some additional billboards in the future. He also pointed out that changing the billboard distance requirements does not and will not require existing nonconforming billboards to be removed.

Ms. Upah-Bant pointed out that on Page 3 of the staff report, City staff states that by keeping the separation distance at 1,500 feet, there could be 4 to 15 new billboards constructed. However, on Page 5, wrote that if they decrease the separation distance from 1,500 feet to 750 feet, then 4 to 15 new billboards could be constructed. Which one is correct? Mr. Myers explained that as best as City staff could tell, by changing the separation distance requirements from 1,500 feet to 750 feet and keeping all of the other variables the same, the number of possible billboard sites would increase from 4 to 15. These are theoretical sites and the billboard companies would still have to work out leases with property owners, etc.

Chair Pollock clarified that they were not talking about between 4 and 15 in both instances. City staff is talking about the difference of 4 additional billboards with the 1,500-foot requirement and 15 new billboards with the 750-foot requirement.

Mr. Myers clarified that there would actually be twice as many billboard *faces* allowed because we are talking about sites for 4 or 15 billboard *structures*. So, if the separation distance requirement is changed back to 750 feet, then it would possibly allow 30 billboard faces on 15 new structures.

City staff recommends that the current 1,500-foot spacing requirement for new billboards be retained.

Next, Mr. Myers discussed the residential buffer of 300 feet. He talked about the reason for the 300 foot requirement, which is to protect residential, parkland, schools, and farmland areas. He then talked about how they should measure the 300 feet. When the Sign Regulations were changed in 2006, City staff thought about whether residents would want to see a billboard 50 feet (which was the previous requirement) from their properties. In amending the requirement in 2006, City staff was considering billboards backing up to residential properties. Staff did not have billboards being constructed across the street in mind. If a person's property is across the street from a billboard site, then that person's home is most likely located in a commercial corridor. It seems reasonable that a resident there would have more of an expectation that there will be commercial development across the street from them. Where residences back up to a commercial corridor, are likely more sensitive to seeing billboards behind their house, especially because many people see the rear area of their home as a more private realm.

So, this leads to the question of how should the City measure the 300-foot buffer requirement. In 2006, City staff did not think about there being more than one way to measure, but he now sees that it could be measured in several different ways. He believes that it would be helpful to clarify in the Zoning Ordinance how the distance is to be measured.

Another question is should we keep the buffer requirement at 300 feet. He noted the residential buffer requirements for billboards in other communities in Champaign County range from 100 feet to 500 feet. City staff recommends that they retain the 300-foot requirement, but clarify in the Zoning Ordinance that it is to be measured on the same side of the roadway.

Mr. Fitch noticed that City staff had not made the proposed change regarding measurement to be taken on the same side of the roadway in the strike-out version of the ordinance. Mr. Myers responded that he has not made the change in the ordinance because he believed adding another slightly different ordinance version would likely confuse people.

Mr. Hopkins stated that he is unclear about why they are proposing to clarify measuring on the same side of the roadway rather than measuring across the roadway. For example, along Route 150 opposite the Beringer Commons Subdivision, some of the residents might not wish to have a billboard located across the street. Chair Pollock mentioned that it would be a straight radial 300 foot measurement from wherever a billboard is being proposed to the closest residential district. This would probably not allow very many billboards, if any. Under the way it is currently recommended to be measured on the same side of the roadway, it could be possible for a new billboard to be constructed.

Mr. Ward felt it to be more complex than this. A billboard could be located across the street either way it is measured. It would just have to be located 300 feet away, which would cause the billboard to be pushed back in the middle of the property across the street rather than on the edge of the property. This would be an impediment to development in the area.

Mr. White stated that in any case, they are talking about distance to the zone, not to a structure, correct? Mr. Myers said that is correct. Mr. White commented that it seems to him that 300 feet would be awful close to the property line in some of the houses that he has lived in. This would be a pretty good intrusion.

Mr. Myers continued with his presentation by discussing the IL Route 130 corridor. He stated that the Zoning Ordinance has never allowed billboards to be constructed in the current Route 130 corridor. The route is a new growth area, and many people believe it is a chance to hold it to a high design standard. In fact, the Mayor has mentioned that she would like to see monument signs for all new businesses in the IL Route 130 corridor. Many of the policy makers for the City of Urbana feel strongly that IL Route 130 not be a new area for billboards.

City staff is not recommending any changes to the list of allowable corridors for new billboard development.

Mr. Myers discussed TIF Districts and development/redevelopment agreements. The current sign and billboard ordinance does not deal with TIF Districts. City staff is requesting that the proposed language be added to exclude billboards on properties in TIF Districts with active development/redevelopment agreements. The reason this was proposed is that in the current ordinance, the City requires Special Use Permits for new billboard development. One of the criteria for an SUP is that a billboard's location cannot impede redevelopment of sites. City staff feels that it would be beneficial to make this standard more concrete, because different people can differ about what "impede" really means and about whether a billboard permit should be issued based on whether or not it meets this standard. So in trying to recommend a concrete and less discretionary standard, City staff decided to instead use TIF redevelopment agreements as a factor. Staff believes that billboards impeding redevelopment of TIF redevelopment sites would be the most troubling.

He stated that during the previous Plan Commission meeting, Adams Outdoor Advertising had suggested that the City allows property owners to make the decision of whether they feel billboard developments would impede development/redevelopment of their properties. There may be another way to finesse the standard by saying that on TIF redevelopment sites that billboards should be to the side or to the rear. This is an interesting idea but difficult to measure. If the Plan Commission or Adams Outdoor Advertising has any recommendations or suggestions, he would be willing to consider word changes to insure that TIF redevelopment sites do not get blocked for redevelopment without removing whole corridors.

Chair Pollock mentioned that at the previous Plan Commission meeting, he had inquired about whether or not a redevelopment agreement expires. When does the TIF District end? If a TIF ends, then billboard companies would be allowed to expand in these areas. From what he understands, the redevelopment agreements vary in time, but never do they go beyond the life of

the TIF District. So those areas in which billboards would be allowed and are precluded because of a development agreement, billboards would be allowed at the time when the TIF District expires.

Finally, Mr. Myers discussed the Special Use Permit process. Before 2006, there was not a Special Use Permit process. There were standards that potential billboard developments had to meet. Because of the concern that billboards as large structures should be built well within the context of their location, City staff then believed that it was advisable to have a Special Use Permit process and to have criteria for review. Since then, City staff has reconsidered with the benefit of expert legal advice. In order to strengthen the sign ordinance, it would be in the City's best interest to keep our high standards but remove the Special Use Permit process in favor of concrete standards that can be administered administratively.

Ms. Stake wondered if there are any other cities that require a Special Use Permit process for billboard development. Mr. Myers responded that there are a few in Illinois. The City of Galesburg comes to mind.

Mr. Ward stated that he does not disagree with City staff's and with the legal advice. Is there a flaw with the Special Use Permit process or is it difficult to write a Special Use Permit procedure that meets all the constitutional requirements?

Dave Krchak, special counsel for the City of Urbana, said that he would be happy to answer this question. He wanted to note that Commissioner Grosser had called him earlier in the day regarding this issue to get clarification and wanted to share what was discussed. Mr. Krchak noted that he also contacted Glenn Stanko, legal counsel for Adams Outdoor Advertising, about his conversation with Mr. Grosser. Although he does not think the conversation was inappropriate, he wanted to be above board in case someone else feels that because he represents the City of Urbana, he should not be having discussions with individual commissioners.

Mr. Krchak stated that his advice to Mr. Grosser was that the City would have to create a totally different Special Use Permit process than we currently have; so different in fact, calling it a Special Use Permit procedure would be misnomer. The current Special Use Permit procedure allows the City to attach certain conditions to the approval of the permit. While the conditions make sense outside of a First Amendment analysis, in a First Amendment analysis it becomes highly suspect. The other problem in a Special Use Permit setting is that there can be objectors. If a certain percent of people who object come in, they can trigger a super majority vote of the City Council before the Special Use Permit could be allowed. This also creates a huge problem. Therefore, the City would need to develop a Special Use Permit procedure that would really take away almost any discretion from the Plan Commission or the City Council to the extent that it just does not make any sense to have one.

He said that they also talked about the difference between a First Amendment analyses (the speech analysis with the billboards) versus other Special Use Permits. He told Mr. Grosser that it is more than with speech. It could include any First Amendment right. The Special Use Permit scenario would be very hard to defend in a lawsuit regarding billboards.

Mr. Myers concluded the staff presentation by stating that the City staff continues to recommend approval for the proposed Zoning Ordinance text amendment for the Comprehensive Signage Regulations along with one revision. The revision clarifies how the 300-foot residential buffer is measured, which would be only on the same side of the roadway as the billboard.

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

Lisa Denson-Rives, of Adams Outdoor Advertising first discussed the idea of billboard “proliferation.” She noted that from 2000 to 2006, there were at least two different moratoriums. There was an open window of about 13 months where permits could be granted by the City of Urbana. During this time, there were nine permits issued. So, over a six year period, there were nine permits issued, of which only seven new billboards were built. If you average this out, it comes to less than 1.5 each year. Therefore, she did not see this as a proliferation.

Another point regarding this issue is that typically there would not be nine billboard permits requested at one time. Sign companies continued to pursue their business during the moratoriums, and then they came in for permits all at one time once the moratorium was lifted.

Another issue she talked about is the separation distance between billboards. The City of Champaign requires 300 feet from billboard to billboard, and this is measured along both sides of the roadway, which is more lenient than the requirement in the City of Urbana.

The Village of Savoy and Adams Outdoor Advertising did agree to a 1,500 foot separation; however, some of the billboards are already spaced 500 feet apart. The reason that Adams agreed to a 1,500 foot spacing requirement is because they had reached a saturation in that market. There is no reason to pursue more inventory in Savoy at this time.

In Champaign County, the ordinance falls under the Illinois Department of Transportation (IDOT) regulations, which basically states that on a FAI or FAP route billboards can be 500 feet apart, and in municipalities, billboards can be 300 feet apart. Champaign County then puts an additional requirement on top of this saying that Adams can only have three billboards within any 5,280 feet.

She explained the difference in number of potential billboards between 1,500 feet, 750 feet and 300 feet. She said that at 750 feet, there would be theoretically 15 potential new sites. This does not take into consideration the use of the lot, what is already built on the lot, where they could place a billboard on the lot, and a willing land owner. Ten land owners will tentatively turn into two leases for billboard development.

A 1,500 foot requirement between billboard developments would theoretically provide four potential new sites. As discussed at the previous meeting, three of these sites would be on North Lincoln Avenue (north of Interstate 74), and at this time there is not much traffic to advertise to along this route. The last possible site is along Route 150 near the Urbana Post Office, which is a very unlikely location to get a lease.

According to Mr. Myers and the staff report, with a 300 foot requirement, there would be 122 theoretical sites available in the City of Urbana. She stated that there are not really 122 sites available in the City. Because of the parcel, land owner, current use, separation to other billboards and to residential and different zonings, sign companies would have never have an additional 122 billboards. In addition, Adams Outdoor Advertising would not want to build an additional 122 billboards in the City of Urbana.

Regarding TIF districts, Ms. Denson-Rives does not feel that billboards would impede successful development. She showed a photo of a billboard located at 701 Neil Street in Champaign where Adams has an easement for Adams to have a billboard at this location into perpetuity. When the billboard was placed in this location, there was no other use on the lot other than the billboard. Two years ago, a developer built a building on the lot, and now the billboard and the building exist there harmoniously. In no way has the billboard impeded the use of the lot.

She showed some maps of the Cunningham Avenue corridor noting where there currently are areas in the TIF redevelopment district. She also pointed out where Adams currently has billboards along the corridor. As one can see, with the 1,500 foot spacing requirement between billboards, they would never be allowed to have anymore billboards at the corner of Cunningham Avenue and University Avenue. Until the TIF district in this area expires, they would not be allowed to build any more billboards a little north of the intersection.

Chair Pollock asked for clarification as to whether the properties excluded in the TIF Districts only applied to those that have development/redevelopment agreements. Mr. Myers said that any property located in the TIF district with a signed development/redevelopment agreement would be excluded unless it would be allowed in the agreement. Other properties in the TIF district would not be excluded.

Ms. Denson-Rives showed a map of the next block of Cunningham Avenue. She mentioned that although some of the parcels are zoned commercial, some of them have a residential use at this time. Adams would never place a billboard there because it would not be the right thing to do. They would wait until these parcels were redeveloped into some kind of commercial use where they could find a place to be on the parcel in the corner and not impede the business there.

She showed another map of Cunningham Avenue and Interstate 74. She pointed out the parcels that currently have redevelopment agreements enacted. As one moves north on Cunningham Avenue, Adams either has a spacing issue, a residential separation issue, or an issue with the potential TIF District.

She explained what willing land owners are. A willing landowner is someone who wants to have a billboard on their property and works with Adams to place the billboard in a way that would not impede the primary use of the land. Billboards are hardly ever the primary use of a piece of land. Land owners usually use billboards as a way to generate additional revenue for a business or for their parcel. Therefore, Adams can never place billboards in the middle of a property or where they would be impeding the landowner business.

Finally, back when C-U Poster Sign Company entered into an agreement with the City of Urbana, Route 130 was nothing more than a cornfield. There was really nothing out there of much interest. She showed a map of the area and pointed out what has been developed along Route 130. She also pointed out where possible billboards could be developed if the City opened up Route 130 for billboard development. Under the current sign and billboard regulations, there is only one possible location due to properties zoned Champaign County AG on the east side next to Wal-Mart and residential zoned areas to the west side.

Glenn Stanko, Attorney for Adams Outdoor Advertising, thanked the City staff and Mr. Krchak for working with him and Adams Outdoor Advertising. They have made progress on a number of aspects of the 2006 text amendment. In particular, he feels that the permit criteria in the proposed ordinance have become much more objective. A major complaint that Adams had about the Special Use Permit process is that it had a lack of objectivity.

There are still four points that need to be addressed. He discussed each one.

The first point concerns the 300 foot residential buffer. In the past there was a 50 foot distance restriction from any residential, AG, or CRE Zoning District. This worked okay because most streets such as Cunningham Avenue and University Avenue are more than 50 feet wide. They did not discover until lately that along Cunningham Avenue there may be requisite zoning on one side of the street and multi-family residential on the other side or there is business zoning on one side and a cemetery zoned AG, on the other side. Therefore, the City can say that they are giving Adams Outdoor Advertising the right to put up new billboards along the Cunningham Avenue corridor, but when you increase the distance from 50 feet to 300 feet and allow measurement to be across the road, then you are cutting out vast swats of potential properties. He stated that he feels the recommendation to measure the distance restriction just on the same side of the road is an improvement. However, Adams is still troubled by the 300 foot restriction, and this could become an issue if Adams lost a lease with a land owner.

Mr. Stanko mentioned that he gets aggravated when people, including attorneys, prepare documents and put things in them just because they have always been in there. This is called boiler-plate. He feels that documents should be given a fresh look. As he looks at the Zoning Ordinance, he does not feel that the distance restriction makes any sense at all. In the context of the Urbana Zoning Ordinance, one must first understand that billboards are limited to three zones, which are B-3, General Business Zoning District; B-4E, Central Business Expansion Zoning District; or IN, Industrial Zoning District. The next thing that the City has done is limited billboards to major corridors, which are basically University Avenue (Route 150), Route 45 (Cunningham Avenue) and Lincoln Avenue north of Bradley Avenue.

When talking about being 300 feet from a residential area, what is the expectation of anyone who lives along these corridors in the first place? When a person rents or buys a residential property along these corridors, he/she knows that they are along a commercial district. So what does saying that a billboard cannot be any closer than 300 feet do when the corridor is already highly commercialized? While driving down Cunningham Avenue he noticed that there is an adult bookstore, fast food restaurants, a bar or two, a mattress factory, a motel, storage areas, strip malls, gas stations, etc. He also mentioned that a billboard is placed in the front of a property, so

the business building on the property would serve as a buffer for those properties backing up to the commercial lot. So, how is the quality of life denigrated for some resident who lives behind one of these enterprises and already has to deal with the commercial area any better any different than living next to a billboard? He does not understand what the issue is at all with placing billboards 50 feet away from residential areas in these corridors. It is a matter of the expectation.

Billboards are also required to be 300 feet away from any agricultural areas. How many AG areas do we have bordering these corridors? And if they do, what does it matter to a farmer whether a billboard is next to his field or not? Even a cemetery, what difference does it make to someone visiting a cemetery whether a billboard is 100 feet or 300 feet away?

Therefore, he suggests that the Plan Commission think about this before voting on the proposed text amendment. It certainly causes a problem if we increase the distance and do not keep it to one side of the highway. It still causes a problem if we keep it on the same side of the highway, because in the older areas, the City is going to reach back and exclude some properties or the City might go up the street to where a multi-family complex is located and exclude some properties. What all these exclusions do is take away from what the City says it is giving Adams in the first place. So, if the Plan Commission does leave the restriction in, he feels that it should be narrowed below 300 feet substantially.

The second point is regarding TIF Districts. He passed out two maps showing where development agreements and TIF Districts are located along Cunningham Avenue. He stated that most of Cunningham Avenue and Route 45 are swallowed up by the TIF District and Adams has the potential to be excluded by these areas if redevelopment agreements do not allow for billboard development. He would like to see this exclusion removed from the text amendment because once again it takes away from what Adams has supposedly been given.

Adams does not place billboards in the middle of lots. Billboards are placed on the edge of the lots as close to the highway as possible. Therefore, he does not see billboards getting into the way of development.

If the Plan Commission and City Council leave the TIF exclusion in, then he suggested changing the language on Page 15 of Attachment B in Section 1.c. to read as such, "On any property designated as a Redevelopment Project in any Tax Increment Finance District Plan adopted pursuant to Illinois' Tax Increment Allocation Act, for which a Redevelopment Agreement with the City of Urbana has been approved or pending before the City Council, ~~unless~~ where such Agreement explicitly ~~allows~~ prohibits for OASS placement." This would be better than what they have right now.

University Avenue is an allowed corridor. Down where the hotel/office complex is located was projected as one or two of the possible sites for billboard growth under the 750 foot separation requirement. These are excluded on the north side of the street because there is a redevelopment agreement. Again, it serves as another one of those restrictions like the residential buffer distance restriction that takes away what the City purports to give in the first place.

The third point is the Route 130 exclusion. Mr. Stanko questions whether the fact the Mayor wants monument signs is a valid planning reason to exclude billboards from Route 130. Route 130 is a state route, and the City has allowed the other state routes to have billboards along them where there is proper zoning. As you go down Route 130, there is not that much business zoning.

The fourth and final point is separation spacing between billboards. He believes this is a policy question. The increase from 4 supposed sites to 15 supposed sites (from 1,500 feet down to 750 feet spacing) isn't much. Many of the 15 sites would not be possible because of the other restrictions. Spacing becomes important if Adams loses a lease and they have a desire to replace it. So, he asked the Plan Commission to give this some thought.

Mr. Stanko summarized by saying that with the exclusions he mentioned, the proposed ordinance basically freezes everything where it is and virtually makes everything out there non-conforming. Because of this, as Adams loses billboard sites, they will not be able to replace them due to spacing restrictions, etc. Then they will face a gradual loss of inventory that they cannot replace. Again by allowing for these corridors in certain zones, the City purports to give a certain amount, but when they add on the exclusions it takes the corridors away.

Mr. Stanko believes that the City Council and the Mayor would like to see no billboards in the City of Urbana, which is sad because Adams Outdoor Advertising is pretty solid citizen business-wise. Adams is a good company. He encouraged the Plan Commission on these last few policy get-over-the-hump type issues to exercise a little independent thought and consideration. Please take into account some of the functional problems that Adams is talking about and why it does not necessarily work quite the way it appears. He feels that there has always been a stereotype that the City of Urbana is not very receptive to the business community. He did not think that the Plan Commission had to buy into this stereotype. He is not asking the City to go out on much of a limb with anything that Adams and himself has offered here. There certainly will not be "billboards gone wild" under any stretch of the imagination.

In response to an earlier question for staff regarding billboards being placed in the middle of lots, Mr. Stanko responded that no land owner will allow a billboard to be placed in the middle of their lot. It will be along the edge of their property or nothing.

Ms. Stake assured Mr. Stanko that the Plan Commission thinks independently. They do listen to everyone, including the Mayor and him. Mr. Stanko stated that it is his opinion that the members of the Plan Commission are very bright people, and they would not be on the Plan Commission if they were not thinkers.

Mr. Ward commented that so there is no misunderstanding on the part of the public, when he used the example of Beringer Commons, he was neither recommending nor thinking it would be advisable that any billboard be placed there. Someone else had used Beringer Commons as an example as residential on one side of the street. He was simply making a point of clarification of what the regulations would be. He neither favors billboards there nor particularly thought it would be a viable place for billboards. It was simply an example. Mr. Stanko replied that he did

not want to imply this. He only wanted to answer a hypothetical question about moving the billboard to the center of the property to get away from whatever restriction is in place.

With no further comments from the public or questions for 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 the case (Plan Case No. 2050-T-07) to the City Council with a recommendation for approval of the proposed zoning text amendment as presented herein, without the revision to change how the 300 foot residential distance is measured. Chair Pollock clarified that the motion is to forward to City Council what was originally brought to the Plan Commission during the previous meeting. Mr. White seconded the motion.

Ms. Upah-Bant stated that she would have to vote against the motion unless the mover would accept a friendly amendment to reduce the minimum distance required between billboards to 750 feet and to allow billboards on Route 130. She mentioned that she feels strongly about both of these. Looking at the restrictions for other townships, villages and cities in this area, she thinks that 1,500 feet is absurd. Ms. Stake, as mover, would not accept this as a friendly amendment.

Ms. Upah-Bant then made a motion to amend the original motion on the table to change the minimum distance required between billboards from 1,500 feet to 750 feet and to allow IL Route 130 as an allowable corridor for the erection of billboards with all the other constraints that the other districts have. The motion to amend died due to the lack of a second.

Mr. Ward stated that he would not second the motion to amend and the reason why he would oppose it is because of Mr. Stanko's speculations about what home owners near a commercial corridor would feel about billboards, about how a farmer would feel and how a small business owner would feel. The fact of the matter is that no one knows the answer to how different people would feel about billboards. If the Plan Commission is going to make substantial changes to the proposed ordinance so that the City would alter the mix of where billboards may be, then he feels that they are obligated to have public hearings and ask the people that would be affected how they would feel about this before he would be comfortable moving this forward to the City Council.

Mr. Grosser commented that he appreciated his conversation earlier in the day with Mr. Krchak. He stated that Mr. Krchak accurately represented their conversation during his testimony. He also said that he appreciated Mr. Krchak's providing him with case citations. Mr. Grosser took the time to read each of those cases. However, he remains unconvinced about the Special Use Permit process being unlawful.

As the Plan Commissioners may recall, they looked at the sign and billboard changes proposed in 2006 and discussed them extensively prior to approving the text amendment. They had also reviewed a variety of potential ways to deal with billboard proliferation, a number of which the City Attorney at the time cautioned were unlawful.

It was also clear throughout the process in 2006 that if Adams Outdoor Advertising did not get an ordinance from the City that they liked, then they would sue the City. They came to many meetings and threatened this. It is their right to file a lawsuit against the City, and he is not surprised that they did it. He also would expect that Adams would continue with their lawsuit until they get what they want unless a court tells them otherwise.

He expressed concern that the City backing down on having the Special Use Permit process be part of the billboard permit process could lead to further erosion of Special Use Permit review in other cases. The City does in fact have Special Use Permit requirements for churches in business zones for example.

In looking at the issue of Special Use Permits in general in relation to due process, it is a public transparent process. We announce it to the public, we invite the public and we talk about a Special Use Permit request in public. It allows people who live in a Beringer Commons, for example, to come and tell us what they think. This is why we do it.

He is concerned that other special interests would approach the City later in a similar manner and try to get changes in a similar manner. He believes that the Special Use Permit process is an important function, and one of the most vital things that the Plan Commission does and is definitely one of things that they spend a lot of time on.

Mr. Grosser went on to say that the Plan Commission had looked at this in 2006. They came up with an ordinance, and it included a Special Use Permit review in it. The City Attorney at the time said it was okay after the Plan Commission unanimously voted for it. Now, we have an attorney who is counsel to the City who says it is not lawful. He does not know who is right. He is not a lawyer, but he does know that there are two different opinions about it. To him, this makes it an open question. He feels it is important for the City to defend itself against lawsuits if it is on the right side of the law. To him, having competing opinions on this makes him wonder which side they are on. He is afraid the City is ready to settle away rights to which it is legally and fairly entitled. It is not just the City's right, but the citizen's rights of Urbana as well. For these reasons, he would vote "no" on the motion on the table.

Ms. Upah-Bant felt Mr. Ward's point is well taken about the public hearing necessity to add the IL Route 130 corridor to the list of permitted corridors. Therefore, she moved to amend the motion on the table to reduce the minimum distance requirement between billboards from 1,500 feet to 750 feet. Mr. Hopkins seconded the motion to amend.

Mr. Grosser commented that other jurisdictions have 1,500 feet, and 1,500 feet seems good to him; so he will vote against the motion to amend.

Chair Pollock called for a hand vote on the motion to amend the main motion. The vote was 2 – 7, so the motion to amend failed.

Mr. White moved to amend the motion on the table to measure the 300-foot residential buffer in all directions or radially. Ms. Stake seconded the motion.

Mr. White commented that there are people who live on the outside of the developed areas of the City. As areas are developed and new projects go in, there is likely to be an increase in areas where outdoor advertising is allowed. There could be someone that builds a house and not know what is across the road from them until the property is annexed into the City. Keep in mind that zoning on properties can change. Therefore, he thinks it should be measured across the street as well.

Chair Pollock called for hand vote on the motion to amend. The vote was 8 – 1, so the motion to amend the main motion passed.

Ms. Stake commented that she is sad as well about the language for the Special Use Permit process being stricken from the sign and billboard ordinance.

Mr. Ward mentioned that he had a lot of questions about the removal of the Special Use Permit process from the very beginning. The Plan Commission and the City Council, in good faith, passed the ordinance in 2006 fully knowing that there could be litigation as a result. He has not seen any substantive reason as to why they should change what the City adopted in 2006. On the basis of these reasons, he would join Mr. Grosser in opposing any change in the Zoning Ordinance at this time and vote no.

Ms. Stake moved to amend the motion on the table to leave Section VII-11 in the ordinance (Special Use Permits for billboards). Mr. Grosser seconded the motion to amend.

Mr. Stanko asked if the Plan Commission would entertain comment from the audience regarding the motion to amend. Mr. Grosser did not feel it would be appropriate at this time as the public hearing was closed. Ms. Stake also felt it would be out of order. Chair Pollock called for a hand vote as to whether Mr. Stanko should be allowed to speak regarding the motion to amend. The vote was 4 in favor and 5 against. The request was denied.

Chair Pollock assumed that if this amendment went to City Council it would mean reinstating the language that was originally in the ordinance when it was approved in 2006. Mr. Grosser commented that it would be good to clarify that the motion needs to include reinstating other language that has changed because of the Special Use Permit review being stricken in the proposed text amendment.

Mr. Myers asked if he could clarify something. It has become perfectly clear to City staff without question that in order to strengthen the City's sign and billboard ordinance that we should in lieu of the Special Use Permit process maintain high standards, but have an administrative process.

Mr. Ward said he understood that the Special Use Permit process is not flawed as an instrument in and of itself. The way it is written may need to be tightened. So, the City Council has two options. One is to substitute another process for the Special Use Permit, and the other option is to work on the Special Use Permit to bring it into compliance with applicable case law. Both options are reasonable options, and it is just a matter of policy of which direction the City wants to go.

Mr. Grosser mentioned that one of the issues with the Special Use Permit review and whether or not it should be in the ordinance is that the lawsuit may continue if the language is reinstated. It has been made clear that the lawsuit will continue. He reminded the Plan Commission that they all agreed unanimously that it was reasonable policy. Some of you may have changed your mind on this particular point since then, but if you still believe it is the right thing to do and are afraid of the lawsuit, keep in mind that it is really the City Council and the Mayor's decision to decide whether or not it is worth a lawsuit. However, the Plan Commission should still let the City Council and the Mayor know what the Plan Commission thinks would be the best way to do this. This is what the function of the Plan Commission is.

Ms. Upah-Bant stated that if she voted against the amendment it would not be because of the lawsuit, but because we have new information from a new attorney (Mr. Krchak) and from the City staff. We have new information that we did not have a year ago. Mr. White added that he believes the proposed ordinance is very clear without requiring a Special Use Permit process. He feels that a Special Use Permit process could muddy the water, and he just assume leave it out.

Chair Pollock commented that he does not have a problem with the Special Use Permit process as a way to decide many different things. The fact is that when the Plan Commission recommended approval of it a year ago as part of billboard permits, they were told that it is legally sound. We are now being told that it is not legally sound, and in fact can damage the chances of having this ordinance succeed overall. He was around when the City lost the billboard lawsuit to C-U Poster Company. It cost the City 15 years and a bunch of money, and we are being told something similar today. So, he strongly urged the Plan Commission members to think about what adding the Special Use Permit process would add to this ordinance that will really protect the citizens of Urbana, given the risk that we would be taking in terms of the entire ordinance. We have legal advice and City staff advice; it cannot be any clearer.

It is not out of the purview of the Plan Commission to consider these issues, especially when we asked for a legal opinion. We then need to weigh the legal advice into their decision.

Mr. Ward stated that he only raised the issue of whether the Special Use Permit process could be constructed in such a way that it would pass judicial review. People provided very honest answers within the limitations at the time. With what they heard tonight, he did not feel that this issue has been fully explored far enough for him to reject it as an option. He is not convinced without further review of what it would take to make a Special Use Permit pass judicial review in this case.

Chair Pollock called for a hand vote on the motion to amend the motion on the table to leave Section VII-11 (Special Use Permits for billboards) in the ordinance. The vote was 3 in favor and 6 against so the motion to amend the main motion failed.

Chair Pollock stated that we are back to the motion on the table, which is as follows: That the Plan Commission forward a recommendation to the City Council for approval as originally proposed at the last meeting with the revision to add language stating that the 300 foot residential buffer be measured in all directions or radially. A roll call vote on the motion was as follows:

Ms. Burris	-	Yes	Mr. Fitch	-	Yes
Mr. Grosser	-	No	Mr. Hopkins	-	Yes
Mr. Pollock	-	Yes	Ms. Stake	-	Yes
Ms. Upah-Bant	-	No	Mr. Ward	-	No
Mr. White	-	Yes			

The motion passed by a vote of 6 in favor and 3 opposed.

Mr. Myers stated that this case would go before the City Council on Monday, October 15, 2007.

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

Item # 4 – Written Communications regarding Neighborhood Conservation Districts (NCD). Mr. Myers stated that based on the comments received from both the Plan Commission and the Historic Preservation Commission, City staff has prepared a Neighborhood Conservation District Ordinance and has sent it to the City Council. Based on comments at the Plan Commission, the draft ordinance includes the following changes to the version reviewed by the Plan Commission: 1) removal from the Historic Preservation Ordinance and 2) 60% of *responding* property owners needing to be in favor of a NCD. The City Council directed City staff to bring it back before them at the first City Council meeting in November.

Chair Pollock inquired as to if a NCD proposal comes forward, is there a way to provide everyone living in the proposed NCD an executive summary of what is involved, what the thresholds are, what it takes to pass a NCD, etc.? Many people are not going to read through the entire NCD Ordinance. Mr. Myers commented that this is a great point. In fact, a suggestion has been made that Staff put together a brochure of Frequently Asked Questions based on comments that people made at the last City Council meeting. Chair Pollock asked if this information would be provided automatically or upon request. Mr. Myers replied that it would be provided to the City Council, to anyone in the community and to neighborhood groups. Chair Pollock

commented that he feels anyone affected by the NCD Ordinance should automatically receive this information rather than having to ask for it.

Mr. Hopkins wondered why a NCD could be separated by a street more than 28 feet wide, but not by a street or alley less than 28 feet wide. Mr. Myers responded that there is something specific in the code that deals with how to measure if there is an official protest. Mr. Hopkins understood it to read that it should state no wider than 28 feet; otherwise alleys and streets that are less than 28 feet wide would be not be allowed to be part of the NCD. Mr. Myers understood what Mr. Hopkins was saying, and he would review this for correction.

Mr. Hopkins also expressed his concern on the following: (1) A “neighborhood organization” is mentioned in Section D, but not defined anywhere; (2) the 60% requirement of property owner approval is a perfect way of never getting a NCD approved; and (3) a NCD may be dissolved by a two-thirds affirmative vote of the City Council members then holding office with no other procedural requirements of any kind. There should be a public process for this.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

The meeting was adjourned at 9:25 p.m.

Respectfully submitted,

Robert Myers, AICP
Secretary, Urbana Plan Commission