

MINUTES OF A REGULAR MEETING

URBANA PLAN COMMISSION

APPROVED

DATE: March 5, 2015

TIME: 7:30 P.M.

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

MEMBER PRESENT: Andrew Fell, Tyler Fitch, Lew Hopkins, Dannie Otto, Christopher Stohr, David Trail

MEMBERS EXCUSED: Corey Buttry, Maria Byndom

STAFF PRESENT: Jeff Engstrom, Interim Planning Manager; Kevin Garcia, Planner II; Christopher Marx, Planner I; Teri Andel, Planning Administrative Assistant I

OTHERS PRESENT: Joshua Creek

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

Chair Fitch called the meeting to order at 7:30 p.m. Roll call was taken and a quorum was declared present.

2. CHANGES TO THE AGENDA

There were none.

3. APPROVAL OF MINUTES

The minutes from the February 19, 2015 meetings were presented for approval. Mr. Trail moved that the Plan Commission approve the minutes as presented. Mr. Hopkins seconded the motion. There were no changes, and the minutes were approved unanimously by the Plan Commission as presented.

4. COMMUNICATIONS

- Plan Commission 2014 Annual Report

NOTE: Andrew Fell recused himself from Plan Case No. 2250-T-15 and Plan Case No. 2255-M-15 due to conflicts of interest for each case.

5. CONTINUED PUBLIC HEARINGS

Plan Case No. 2250-T-15: A request by the Urbana Zoning Administrator to amend Article II and Article V of the Urbana Zoning Ordinance to establish definitions, use provisions, and possible conditional permissions for “Gaming Halls”.

Chair Fitch re-opened this case. Christopher Marx, Planner I, presented an update for this case to the Plan Commission. He reviewed the changes made to the proposed text amendment as a result of the discussion held by the Plan Commission at the previous meeting on February 19, 2015. Those changes were as follows:

1. *Definition.* City staff made the definition more hard in terms of more solid, definable criteria that included a presence of a seating area devoted to gaming that is greater than the seating area for food and beverage service or general merchandise, an estimated net revenue of at least 40% or more derived from video gaming terminals, an overall size of 1,500 square feet or less, and the absence of a full service kitchen for any food service.
2. *Use Category Restrictions.* City staff changed gaming halls from a conditional use to a special use in the B-3 (General Business), B-4 (Central Business) and B-4E (Central Business – Expansion) Zoning Districts.
3. *Gradual Accessory to Principal Use Conversion.* City staff consulted and decided that this use would be similar to a change in any other use obtained through a Special Use Permit, and that it would be prosecuted in the same way as any zoning use violation would be.
4. *Gaming Hall Ownership Restrictions.* The City Attorney’s office determined those restrictions on how many facilities one entity may own and the requirement that owners of such facilities to reside in Urbana could not be placed in the Urbana Zoning Ordinance and would not withstand legal challenges.
5. *Prohibition in Other Illinois Municipalities.* City staff inquired with the government of Lake County and the City of Bloomington. Both entities achieved prohibition through their liquor licensing provisions in their Municipal or City Code.

Mr. Marx presented City staff’s recommendation for approval of the proposed text amendment. He reviewed the exhibits in the written staff report dated February 27, 2015.

Chair Fitch asked if any of the Plan Commission members had questions for City staff.

Mr. Trail inquired about the 1,500 square foot criteria on the size of an establishment. Mr. Marx explained that 1,500 is a general size used for language in the Zoning Ordinance for food and beverage establishments as well as existing gaming halls.

Mr. Trail wondered what the benefit would be for having size criteria. Mr. Marx replied that it is to provide a more specific definition for gaming hall.

Mr. Stohr asked City staff to elaborate more about the City of Bloomington and the language they used to explicitly prohibit licensing for an establishment with video gaming as its principal use. Mr. Marx stated that the City of Bloomington held the same debate as the Urbana Plan Commission is having. The language that they adopted was a little more qualitative and in the discretion of the Zoning Administrator.

Mr. Stohr stated that at the last Plan Commission meeting, many of the members agreed that they were not in favor of seeing gaming halls located in the City of Urbana. Chair Fitch stated that the problem is that the Plan Commission cannot prohibit them in the Zoning Ordinance. Mr. Trail wondered if the City of Bloomington defined gaming hall and then the City Council prohibited them. Mr. Marx replied that they prohibited gaming halls through the City Code.

With no further questions for City staff, Chair Fitch opened the hearing up for public input. There was none. Chair Fitch closed the public input portion of the hearing and opened it for Plan Commission discussion and/or motion(s).

Mr. Stohr stated that he cannot see how the gaming hall use enhances our community. If we cannot outright ban it, then he suggested doing something to discourage it. The minimum of 100 feet is a remarkably small distance. It would be more appropriate to be 1000 foot buffer distance from schools, churches and daycares.

Mr. Otto commented that he still did not understand what is going on. He felt like the Plan Commission was being pushed to introduce a new zoning category. Originally, the proposed use came in as a way to support existing businesses and fraternal organizations. Now, licenses are being issued to sham operations where gaming is not a secondary use, but instead is actually a primary use. They cannot enforce the primary use thing but have to come up with a new zoning category because gaming halls already exist in the City of Urbana. He felt that he was not being given the right tools to address this issue. If they cannot do this or that, then maybe they should restrict them to 2500 feet separation between gaming halls.

Chair Fitch summarized the discussion held by the Plan Commission for this case. He stated that if the Plan Commission sent it to City Council and they decided to amend it, then it would have to come back to the Plan Commission. Mr. Engstrom added that it depends on the changes that City Council wanted to amend. As long as they only changed what was mentioned in the original legal ad, then they could make those changes on the spot.

Chair Fitch stated that next the Plan Commission tried to tighten it by making it a special use rather than allowed by right and by tightening the definition. Now, they can either tighten it some more or just vote to approve it or to deny it as presented. By tightening it and approving it, the record clearly reflects the opinion that most of the Plan Commission members believe that gaming halls are not a beneficial use for the City of Urbana. From tightening it as far as they could and then denying the proposed text amendment, it would also send the signal to City Council that the Plan Commission does not think gaming halls are appropriate establishments for Urbana. It is the City Council's decision whether to ban gaming halls. The Plan Commission provided the discussion on how to ban them if the Council decides to do so.

Mr. Trail stated that if they want to limit it in some way then they will have to define it. He felt that the Plan Commission could tighten the criteria for a special use for gaming hall and add a greater separation distance between establishments. He believed there were a few more ways to limit the gaming hall use through zoning to make them the use less harmful seeing that it probably will not be banned.

Chair Fitch reviewed some of the extra criteria that were approved for a special use permit for a firing range. For the proposed text amendment, the Plan Commission could recommend that the City Council extend the buffer distance from schools, churches and daycares. By doing so, more land owners would become interested in a special use permit request case. A valid written objection could prompt a 2/3 majority vote by City Council.

Mr. Trail wondered what the largest distance is that they could recommend without getting into trouble. Mr. Engstrom replied that the largest buffer requirement in terms of state law is 1000 feet.

Mr. Otto commented that there is so much about this that seemed wrong to him. The linkage of alcohol and gambling is wrong. Chair Fitch agreed, but stated that it is the state law. He stated that he intended to vote against the proposed text amendment. Mr. Trail asked what his reasoning would be for voting against it. Chair Fitch answered that gaming halls would not add money to the community and in fact would draw money out of the community. The social costs that are associated would offset any money that the community could benefit from. Mr. Trail was not sure how voting against it or voting for it would achieve anything. Chair Fitch reiterated that he believed that it would signal to City Council that the Plan Commission does not feel that gaming halls are appropriate for the community.

Mr. Otto expressed his frustration. It bothered him that the Zoning Administrator could not deny a request for a gaming hall simply because it is not a use in the Table of Uses. Instead it is automatically allowed under what the Zoning Administrator feels is a comparable use. He believed that this is a misuse of the Zoning Ordinance. As a result, he felt that the proposed text amendment was being forced upon the Plan Commission. He hoped that this was not happening with other uses. Chair Fitch clarified that the Community Development staff does not issue gaming or alcohol licenses. Mr. Otto commented that the Zoning Administrator had something to do with Hot Spot being allowed because the Zoning Administrator made the decision that a restaurant or café would be the closest comparable use to what Hot Spot proposed. Mr. Engstrom explained that when Hot Spot came to the City, they said they wanted to have a café and gaming machines. The Zoning Administrator looked at it and determined the closest use in the Table of Uses was café. Since then, gaming machines have become popular. City staff has been pushing the proposed text amendment to have a means to address gaming hall use when it comes up again in the future. If the Plan Commission is against gaming halls, then they should vote down the proposed text amendment and send a message to City Council that they think gaming halls should be prohibited through the City Code.

Mr. Stohr asked if they wanted to elaborate on this, should the Plan Commission increase the distance and note the types of places that gaming halls should be separated from. Mr. Engstrom

replied that City staff would convey the Plan Commission’s concern about the distance through the written memo to City Council. He did not feel that they needed to make a motion for this.

Mr. Hopkins stated that he does not know what City Council thinks. Because the use is not a banned state use, the City cannot ban gaming hall through the Zoning Ordinance. So, if the Council votes to deny the proposed text amendment, future requests for “gaming halls” would be treated as whatever the Zoning Administrator considers to be the closest defined use under the current Zoning Ordinance. If City Council chooses not to ban the gaming hall use, he wants to them to adopt the Plan Commission’s current version of the recommendation, which is quite different from what was originally proposed. Although he agrees that the record makes it clear to City Council what the Plan Commission thinks, he would be inclined to amend it. He was not sure that voting against it would send the right message. So, he suggested that the Plan Commission make a statement with their vote that City Council should ban gaming halls through the gaming license and if they do not then their version of the text amendment should be made. He would even be inclined to amend the distance to 500 feet as well.

Mr. Trail believed that the statement should also be enumerated to really send the message that the Plan Commission is against gaming halls in Urbana. Chair Fitch asked for a straw poll of the members to see who would prefer gaming halls to be banned. All five members raised their hands.

Mr. Otto moved that the Plan Commission forward Plan Case No. 2250-T-15 to the City Council with a recommendation for approval as presented in Exhibit B and with the recommendation that City Council act through the City Code to ban gaming halls. Mr. Hopkins seconded the motion.

After reviewing a map to see what impact a 1,000 foot buffer would have, Mr. Hopkins decided that 1,000 feet would be too much and would keep them from being able to locate where they should. He, then, moved to amend the motion to increase the distance in Section VII-5.F.1 from 100 feet to 500 feet from any existing gaming hall establishments and from existing schools, daycares and churches. Mr. Otto seconded the motion to amend. Roll call on Amendment #1 to the motion was as follows:

| | | | | | |
|-----------|---|-----|-------------|---|-----|
| Mr. Fitch | - | Yes | Mr. Hopkins | - | Yes |
| Mr. Otto | - | Yes | Mr. Stohr | - | Yes |
| Mr. Trail | - | Yes | | | |

Amendment #1 to the motion was approved by a vote of 5-0.

Mr. Stohr moved to amend the motion to extend the 500 foot separation distance to include other licensed gaming establishments in addition to the other others on the list. Mr. Otto clarified that the amendment would add language to Section VII-5.F.1 to read as such, “An establishment shall also be a minimum of five hundred feet away from any existing licensed Gaming Halls or licensed gaming establishment”. Mr. Hopkins seconded the motion. Roll call on Amendment #2 to the motion was as follows:

| | | | | | |
|-------------|---|-----|-----------|---|-----|
| Mr. Hopkins | - | Yes | Mr. Otto | - | Yes |
| Mr. Stohr | - | Yes | Mr. Trail | - | Yes |
| Mr. Fitch | - | Yes | | | |

Amendment #2 to the motion was approved by a vote of 5-0.

Mr. Otto reiterated the motion including the amendments. Roll call was then taken on the motion and was as follows:

| | | | | | |
|-------------|---|-----|-----------|---|-----|
| Mr. Otto | - | Yes | Mr. Stohr | - | Yes |
| Mr. Trail | - | Yes | Mr. Fitch | - | Yes |
| Mr. Hopkins | - | Yes | | | |

The motion passed by a unanimous vote of 5-0. Mr. Engstrom stated that this case would be forwarded to City Council on March 16, 2015.

6. OLD BUSINESS

There was none.

7. NEW PUBLIC HEARINGS

Plan Case No. 2255-M-15 – A request by Joshua Creek to rezone an area totaling 7.38 acres located on East Florida Avenue from B-3, General Business Zoning District, to R-5, Medium-High Density Multiple-Family Residential Zoning District.

Chair Fitch opened this item on the agenda. Kevin Garcia, Planner II, presented this case to the Plan Commission. He presented a brief history of the subject property and stated the purpose of the proposed rezoning is to bring the property into conformity. He described the subject property as well as the adjacent properties noting their current land uses, zoning and future land use designations. He reviewed the goals and objectives of the Comprehensive Plan and the La Salle National Bank criteria that pertain to the proposed rezoning. He read the options of the Plan Commission and presented City staff’s recommendation for approval. He stated that he would answer any questions the Plan Commission may have and noted that the applicant was also available to answer questions.

Chair Fitch asked if any members of the Plan Commission had questions for City staff.

Mr. Stohr asked if there would be a tax advantage for rezoning the property to R-5. Mr. Engstrom did not believe that the rezoning would change the tax in anyway.

Mr. Trail stated that multi-family residential was once a permitted use in the B-3, General Business Zoning District and it is now a special use. Was it changed to discourage residential in the B-3 Zoning District or did the City only want to encourage certain types of multi-family in the B-3 Zoning District. He wondered how incompatible or non-conforming multi-family residential is in the B-3 Zoning District. Mr. Engstrom replied that it was changed so that when

apartments are built in the B-3 Zoning District that they fit into the context appropriately and so that developers do not pave over all of the City's business corridors with apartments. So, it is not that they are entirely inappropriate but just to make sure that the apartments are more appropriate.

Mr. Trail asked what the advantages are for rezoning the property. Mr. Engstrom stated that City staff's intent for the area is that it remains stable. When it was a former K-Mart site, it was not very stable. Now that the site has been developed with a viable use, City staff would like to see the use continued. Since the property has been subdivided, it no longer fronts on Philo Road, so City staff felt that residential zoning would be appropriate.

Mr. Trail stated that it leaves the B-3 zoned properties with a narrow and shallow frontage area along Philo Road. He wondered if this does not restrict the potential uses for these properties. Mr. Engstrom replied that it might restrict them but the businesses located on these properties are successful and seem to be operating fine with their current lot configurations.

Mr. Otto asked if the proposed rezoning would impact what can be done by right on the commercial lots. Mr. Garcia said no. The B-3 zoned commercial lots would retain all associated rights that they have had since the property was developed.

Mr. Stohr wondered if rezoning the subject property to R-5 would discourage business to develop on the vacant lots or make them more likely to be converted to multi-family residential too. Mr. Engstrom explained that the only practical effect is more buffering and screening requirements are required between B-3 and R-5 Zoning Districts.

Mr. Otto inquired if any screening would be required if the property remained zoned B-3 and a developer wanted to build on an adjacent B-3 lot. Some uses allowed by right in the B-3 Zoning District, such as a gasoline plaza, would be less desirable to be located next to a residential unit, even if the residential unit was located in an adjacent B-3 Zoning District, such as in this case. Mr. Engstrom stated that the landscaping and screening requirement between B-3 and R-5 would be a depth of five feet, so in a sense it would impact the development of adjacent B-3 properties if the proposed rezoning is approved. However, there would be no new requirements of the existing B-3 properties unless they were to be redeveloped.

There were no further questions for City staff. Chair Fitch reviewed the process for a public hearing. He, then, opened the hearing up for public input.

Joshua Creek, applicant, approached the Plan Commission to speak. He explained the purpose of the proposed rezoning is to simply comply with the City code.

Mr. Stohr asked if there is a tax or assessor difference in the way it is currently zoned to the proposed zoning. Mr. Creek replied not to his knowledge.

Mr. Otto inquired whether Mr. Creek still owns the adjacent commercial outlots along Philo Road. Mr. Creek said no.

Chair Fitch asked for clarification as to whether they intend to build or redevelop any more at this time. Mr. Creek replied no.

There was no further public input. Chair Fitch closed the public input portion of the hearing. He opened the hearing up for Plan Commission discussion and/or motion(s).

Mr. Otto asked if the other property owners between the subject property and Philo Road were notified of the proposed rezoning. Did City staff hear anything from the neighbors? Mr. Garcia said that it is correct. City staff notified those property owners and did not receive any communication from them.

Mr. Hopkins moved that the Plan Commission forward Plan Case No. 2255-M-15 to the City Council with a recommendation for approval. Mr. Otto seconded the motion.

Mr. Hopkins felt it would be in the City's best interest to rezone the subject property as requested. It is roughly consistent with what was planned in the Comprehensive Plan. At the time when K-Mart was built at this location, the original zoning for business from the depth of Philo Road was closer to the East Urbana Regional Shopping District, which is where what we now call big-boxed stores were located. This has not been the case since roughly 2000 when K-Mart began to fail and Meijer bought the property at the corner of Windsor and Philo Roads. So, the quantity of land zoned for business between Florida Avenue and Colorado Avenue is still too much. The vacant land behind the old Piccadilly's has been vacant forever. He would not be surprised if the City wanted to rezone even more of this area so it becomes a more reasonably focused community commercial node rather than a mile of failing, obsolete depth of commercial along Philo Road.

Mr. Trail wondered if the remaining business zoned properties along Philo Road were still viable for the purposes that one would normally see in the B-3 Zoning District. Mr. Hopkins replied that the vacant property behind CVS should probably be rezoned to residential. He did not think that the City wanted or that it was viable to have commercial off Colorado Avenue. The old Kroeger site is still largely vacant, so that site might no longer be viable as commercial.

Mr. Otto stated that at looking at the area in question, the apartment building is fairly new and not going away for at least a generation or more. There are viable businesses in the other lots. There is no reason not to approve it. The big-box stores are out of fashion now. Chair Fitch commented that they are not out of fashion but would not locate here anymore. They would locate either on High Cross Road or by Meijer. Mr. Hopkins added that he would not want a commercial enterprise to locate here due to the current evolution of the land use pattern. Therefore, the subject parcel no longer being available as B-3 is desirable.

Mr. Stohr asked if office use is allowed in the B-3 Zoning District. Chair Fitch stated that almost any use is allowed in the B-3 Zoning District except multi-family. Mr. Stohr commented that he hated to see the loss of some business zoning. There might be some other type of business besides big-box stores that want to locate in this area. Once it is zoned residential, then the City will lose an area where business could be located someday.

Roll call on the motion was as follows:

| | | | | | |
|-------------|---|-----|-----------|---|-----|
| Mr. Trail | - | Yes | Mr. Fitch | - | Yes |
| Mr. Hopkins | - | Yes | Mr. Otto | - | Yes |
| Mr. Stohr | - | No | | | |

The motion was passed by a vote of 4-1. Mr. Engstrom noted that this case would be forwarded to City Council on March 16, 2015.

8. NEW BUSINESS

There was none.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

Jeff Engstrom reported on the following:

- Plan Commission 2014 Annual Report was handed out on CD-ROM prior to the start of the meeting.
- Digital OASS Text Amendment – City staff took some time to work on a license program and will present it along with the proposed text amendment to the Committee of the Whole on March 9, 2015.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

The meeting was adjourned at 9:00 p.m.

Respectfully submitted,

Jeff Engstrom, Secretary
Urbana Plan Commission