

MINUTES OF A REGULAR MEETING

URBANA PLAN COMMISSION

APPROVED

DATE: June 24, 2004
TIME: 7:30 P.M.
PLACE: Urbana City Building
400 South Vine Street
Urbana, IL 61801

MEMBERS PRESENT: Christopher Alix, Alan Douglas, Laurie Goscha, Michael Pollock, Bernadine Stake, Marilyn Upah-Bant
MEMBERS EXCUSED: Lew Hopkins, Randy Kangas, Don White
STAFF PRESENT: Rob Kowalski, Planning Manager; Paul Lindahl, Planner; Teri Andel, Secretary
OTHERS PRESENT: There were none.

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

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

2. CHANGES TO THE AGENDA

There were none.

3. APPROVAL OF MINUTES

Ms. Stake moved to approve the minutes from the June 10, 2004 meeting of the Plan Commission as presented. Mr. Alix seconded the motion. The minutes were approved by unanimous voice vote.

4. WRITTEN COMMUNICATIONS

- Aerial Photo Site Plan for Gateway Condominiums

5. CONTINUED PUBLIC HEARINGS

Plan Case # 1897-T-04: Request by the Zoning Administrator to amend the Urbana Zoning Ordinance with respect to the Mixed Office Residential (MOR) District including the adoption of Design Guidelines.

This case was continued to the next meeting of the Plan Commission, which was scheduled for July 8, 2004.

6. NEW PUBLIC HEARINGS

There were none.

7. OLD BUSINESS

Annual Review of the By-Laws

Chair Pollock commented that some suggestions in the By-Laws were put together by Jack Waaler, from the City's Legal Department, based on suggestions made by himself. He was concerned with the incident that arose in the rezoning case of the Nabor House on Lincoln Avenue. There were two things in particular that concerned him, which was why he thought the Plan Commission might want to codify some of their thoughts. The first reason was that the action they took, as a Plan Commission, to address what was a conflict of interest in the Nabor House Rezoning case involved reopening the case and rehearing the case. As a result, the decision of the Plan Commission was reversed. Although the City Council did not act any differently on the case, the conflict of interest had an impact on how the Plan Commission handled the case and what their original decision was. The second reason was because after this incident happened, he received some phone calls from people saying that they did not see anything wrong with what had happened, because Plan Commissioners were suppose to be involved in their neighborhoods. Because there was a difference of opinion about whether or not that and other similar types of activities were appropriate, he wanted to open the topic up for the Plan Commission to discuss.

Rob Kowalski, Planning Manager, reviewed each Article of the By-Laws. He briefly described the content of each Article. The main changes suggested to the By-Laws were as follows:

Article IV-2. Meetings. The suggested change was to allow a staff person be authorized to be present at the date, time and place of a cancelled meeting rather than a staff person and the Chairperson.

Article V-3. Failure of a Petitioner to Appear. Staff suggested that this section of the By-Laws be changed to give the Plan Commission the option of either continuing a case or dismissing a case if a petitioner did not appear at the public hearing. It seemed a little harsh to dismiss a case if a petitioner could not attend the meeting due to an emergency or outside conflict. In the event, where there was a case and a petitioner did not feel it was important to attend the meeting, then the Plan Commission would still have the discretion to dismiss the case.

Ms. Stake inquired if staff encouraged petitioners to attend the meetings? Mr. Kowalski stated that staff regularly reminds petitioners to appear mostly because there are usually questions that would be best answered by the petitioners and not by staff.

Article X. General Provisions. Mr. Kowalski noted that most of the changes that Chair Pollock mentioned were in this Article. Those changes included the following:

Section 1 dealt with cases of conflict of interest. Quite a bit of language was added to this section and stated that any member with a conflict of interest must state so, and that member would not be allowed to vote. Their abstention would not be counted as either an aye or a nay vote. The member abstaining would not be counted in determining how many votes would be required to approve a matter.

Mr. Alix asked if the stricken language in Section 1 meant that a member who abstains would still be counted toward the quorum for voting on a case? Mr. Kowalski replied that this section was not talking about the quorum. It talked about determining the total to which the percentage of votes required was applied to determining the number of votes for approval of the matter. The stricken language was reworded earlier in the section. He mentioned that there were different scenarios for how many votes would be needed. Sometimes, it was 2/3 or a simple majority, depending on the matter at hand.

Mr. Pollock suggested that they add a few more words, so that it read as such: *shall not be counted in determining the votes required for a consideration.* Mr. Alix agreed. He stated that as it currently was proposed, it was not clear to him from reading it whether there could be a quorum to open a public hearing and be in a situation where the vote could not count. Mr. Pollock stated that it would be better to clarify this for the use of any future Plan Commissioners who may not understand it.

Section 2 provided a few examples of what would create a conflict of interest. Section 3 gave the Chairperson authority after discussing the issue with the City Planner and the City Attorney to determine a conflict of interest. The Commission could over-rule the determination of the Chairperson.

In Article X.3, Mr. Alix inquired if it applied to potential conflicts that were identified prior to the public hearing? Mr. Kowalski responded by saying that Article X.3 could be applied after a public hearing had been held as well, especially if it was unknown that there was a conflict until after the public hearing.

Mr. Alix asked if it were clear from Section 3 and parliamentary procedure, what the mechanism would be by which this would work? Mr. Pollock noticed that it was not specified and felt that it would be better if it were specified in the By-Laws. He explained that in the Nabor House Rezoning, a conflict of interest was brought to his attention and he talked to the City Attorney about whether the conflict of interest was inappropriate and whether it compromise the decision that the Plan Commission had made. The petitioner in that case had come forward and stated that they believed it had compromised the decision. He brought the case back to the Plan

Commission, and his recommendation, based on what had happened, was that they reopen the case, have the Plan Commissioner involved recuse themselves, and the remaining Plan Commission members reconsider the vote.

Mr. Pollock felt that the decision should really rest with the Plan Commission. The Commission could say no to reconsidering the case.

Mr. Alix asked if the reason for adding Section 3 was to list whom and in what order would make a determination as to whether or not there was a conflict. Mr. Pollock said yes. Mr. Kowalski commented that staff wanted the Plan Commission to have the ability to override a decision to avoid any situation where it may be a political move to discount a member's vote. To have the proposed process was important. Mr. Pollock added that as with all matters, the final decision rested with the Commission.

Ms. Upah-Bant noticed that the by-laws did not mention any other kinds of conflicts of interest such as a Commissioner living on an adjacent property or having a material interest in the property under discussion. Mr. Pollock stated that in the past, Commissioners have always realized that they were in a position where they may be questions, and they would recuse themselves. The reason he felt additional language should be added due to what happened with the Nabor House Rezoning was because there was a difference of opinion about whether or not what had happened was a conflict or not. He expected that in the future, if the Plan Commission wound up with situation where it was equally unclear, at some point the Commission should talk about it and decide as a Commission what they thought.

Ms. Upah-Bant suggested adding language like "in addition to regular or standard sorts of conflicts of interest". Mr. Alix believed that was addressed in Article X. Section 1. Ms. Upah-Bant commented that Section 2 sounds like the only kind of conflict that a Commissioner could have would be if they talked to the press, in a public forum or on a public petition in regards to a depending case. Ms. Stake agreed with Ms. Upah-Bant. Mr. Kowalski mentioned that it might be helpful to add "such as" and list a few examples.

Mr. Pollock suggested that they sit down and try and figure out what types of conflicts there might be. This would be okay as long as there was an attachment to the list saying that "and others or any other conflict that Commissioners felt they had". He wanted to make sure that the Commission lists conflicts of interests to the point where something not on the list would be considered not to be a problem. Mr. Alix was not comfortable with this idea, because it was a statutory issue. It was very complicated, but legally well defined. It was clear to him that Section 2 added a conflict of interest rather than being a listing in its entirety. He suggested if it was not clear to others that they reword Section 2 a little. Ms. Goscha recommended changing the language in Section 2 of Article XI to read as such, "*...being voted on by the Commission shall also constitute a conflict of interest*" or "*...shall in addition to legally recognized conflicts of interest shall constitute a conflict of interest.*" Mr. Kowalski added that if there were some statutory language, then it might be a good idea to reference that. By making a list, they might contradict something that was stated in the statute. Mr. Alix agreed and stated that this issue was probably more complicated than the Commission would want to enumerate.

Ms. Upah-Bant asked Mr. Kowalski to check with the City Attorney regarding the By-Laws not talking about overall conflicts of interests anywhere else in the whole document. Ms. Stake agreed, especially since Section 2 was so specific. Ms. Upah-Bant felt that there should be some language added such as, "Commissioners are advised to seek council from the City Attorney when not sure about whether a situation would create a conflict of interest." It could be something real basic. Mr. Pollock believed that part of the reason why "conflicts of interest" were not really mentioned in the By-Laws was because in general, this had not come up very often.

With regards to Article X. Section 5, Ms. Upah-Bant commented that when she first became a Plan Commissioner, she attended a training class. In that class, the instructors suggested that Plan Commissioners should not talk to anyone outside of a Plan Commission meeting about an impending case. All testimony should be taken within the confines of a meeting, because then all of the Plan Commission members would be able to hear the same thing. She remarked that since the class, this had been her guiding rule when people call her to discuss impending cases prior to the public hearings. She would ask people to come to the public hearing and give testimony at the meeting. She believed that either all the Commissioners needed to hear what people had to say or else none of the Commissioners needed to hear what people had to say.

Mr. Pollock felt it was a good idea that Plan Commissioners should not talk to people and lobby. There have been incidents where the public lobbies the Commissioners. He stated that the Commissioners could either say that they did not want to talk about an impending case or else listen to the caller and say "see you at the meeting". Most people that call him were usually calling with questions about the substance of an impending case. If he does not know the answer to people's questions, then he would refer them to City staff. If he does know the answer, then he would give the callers factual information and refuse to discuss either side of the issue in terms of how he planned to vote and what he thought about it. He said that he tells callers straight out that he had not made up his mind and was going to listen to all of the evidence.

Ms. Stake commented that people call City Council members to discuss impending cases. Mr. Pollock replied that there was a very distinct difference between what the Plan Commission and what the City Council do. City Council members were elected, and part of the job of the City Council was to receive those types of viewpoints from the public. City Council also decides what happens to a case, not the Plan Commission. The Plan Commission only makes a recommendation to City Council.

Ms. Stake felt that they should listen to the public as well. Mr. Pollock stated that he would not discuss an impending case with the public. The Plan Commission was there to take public testimony, to fairly and impartially consider that testimony, and to render a recommendation to the City Council. The Plan Commission was not there to relate to the political sides of the public or the City Council. Ms. Stake commented that he was saying it in such a negative way. She noted that there were many people who were intimidated by the Plan Commission. Mr. Kowalski stated that there many communities that were much more strict about this in their By-Laws. Their commissioners were instructed to refuse to talk to anybody at any level about impending cases. This really disenfranchises many people from government in general. He went on to say that in general, commissioners were not suppose to engage in lengthy discussions,

share opinions about certain issues, and say how they were going to vote on a case. The City of Urbana has not encouraged the Commissioners to be as strict as other communities. Ms. Stake asked what communities were strict? Mr. Kowalski explained that Louisville, Kentucky was that strict. Ms. Upah-Bant added that many communities in Illinois were strict as well.

Mr. Kowalski stated that it had not seemed to be a problem in the City of Urbana as of yet where they would have to go to that extreme. Mr. Pollock mentioned that was why he was really glad to have the Plan Commission discuss and possibly recommend adding language in their By-Laws about conflicts of interest. It has always seemed to him that these types of things were left to the discretion of the commissioners. However, it was crucial, above all else, that the public have faith that what the Plan Commission does was being done fairly and openly.

Ms. Stake inquired if the public could talk to the City staff? Ms. Upah-Bant answered by saying yes. Mr. Kowalski added that was typically how it happened. If there were questions or concerns about an impending case, then staff would usually get the calls first. Many times the public gives feedback on how they feel about the case as well. Staff encourages people to attend the meetings, and if that is not possible, then staff encourages the public to put their thoughts and feelings regarding an impending case on paper and submit it to staff. Staff then can get those communications to the Plan Commissioners prior to the meeting.

Mr. Alix mentioned that although he did not receive many calls on impending cases, he handled it pretty much the same way as Chair Pollock. He felt it would not be a conflict of interest to give the public factual information regarding an impending case. He also referred people to call City staff for further details. However, he draws a line when a caller starts trying to persuade him to vote one way or another.

Mr. Pollock stated that most of his calls were regarding the process of a public hearing. When will the hearing be? How do the Plan Commission members talk about it? Would a decision be made the night of the public hearing? After Plan Commission makes a decision, then what happens? He believed that the more the public knows about how the Plan Commission processes cases, the better off they would be.

Mr. Douglas explained that the reason he took phone calls from the public was because there was so much bad information out there. After talking to people, they will know more factual information regarding a case.

Mr. Pollock inquired if the Plan Commission was comfortable with Article X, Section 2 of the By-Laws outside of the issues that staff was going to check with the Legal Department on? The Plan Commission members agreed that it would be a good policy for the Commission.

Mr. Alix requested that staff ask the City Attorney to look at Article VI – Procedures for Hearing. There were three types of cases, which were as follows: 1) City staff presents a case to the Plan Commission and makes a recommendation with the petitioner in the audience, 2) City staff presents a case to the Plan Commission and makes a recommendation without the petitioner present at the meeting, and 3) City staff is the petitioner in the case, presents the case to the Plan Commission and makes a recommendation. He expressed his concern that some of the points in

this Article would not be clear in the types of cases where the City either presented the case without a petitioner present or the City was the petitioner. He wanted the City Attorney to look at these two cases in particular to see if there would be any conflicts with the procedures as described in Article VI.

Mr. Kowalski responded by saying that there were many different types of petitioners. Although the Plan Commission did not actually see the applications that were submitted for cases, the applications asked for who the applicant/petitioner was, who was the landowners, and who was the attorney. The landowner was typically required to sign the application as well. The petitioner could be the landowner, a developer who had not purchased the land yet, and in some cases it could be City staff.

When the City was the petitioner, most of the time it was to handle general city business of text amendments, an area-wide rezoning or adoption of a new Comprehensive Plan. In rare occasions, there were times when the City was a petitioner on behalf of a landowner. This was usually to foster the City's economic development goals or to assist in the process. It was never done without the landowner's consent to do so. Usually what happened was that in working through the City's Economic Development program, a landowner would show what they intend to do, but he/she did not want to fill out the paperwork or come to the public hearing. Then, City staff would make a decision as to whether they say "no thanks" to the landowner's ideas or whether they would try to help foster the landowner's proposal. It does not happen that often, but in those cases, City staff has acted as petitioner with information from the landowner and the developer.

Mr. Alix expressed that his concern was that the City staff both bringing the action and making a recommendation on it might not be in keeping with the intent of Section 6 under Article VI. He did not think that there was a procedural problem. He only wanted to make sure that the By-Laws matched what the Plan Commission did in those cases. Mr. Pollock inquired if the Plan Commission members felt that when the City staff was the petitioner and made a recommendation and presented the case, did it anyway impugn the integrity of the process? Did it in anyway mean that people who might be opposed or want to express their points of view somehow were compromised by the fact that the City was handling both ends of the process?

Ms. Stake replied that she was uncomfortable with it. There were a number of people who were uncomfortable with the rezoning for the Walmart land. She stated that the Commissioners did not know who owned the land. Mr. Alix asked who the petitioner was in that case? Mr. Kowalski replied that Wilmer Otto signed the application, but the City, technically, was the petitioner, because they agreed to take Mr. Otto's petition forward. In this case, the landowner came to the City of Urbana and said that he had a proposal that would meet with the City goals. Would the City act as the petitioner? City staff agreed to do so. Ms. Stake commented that nothing was in the staff report saying that Mr. Otto owned the land. Mr. Alix replied that the information was in the application. He remembered that it was attached to the staff report. Mr. Pollock suggested that City staff be sure to attach copies of applications to the staff reports in the future, especially when the City was to act as the petitioner.

Mr. Alix was not clear why there was a need for City staff to act as the petitioner or act as a proxy for the petitioner. Clearly, in the Walmart case, there was a petitioner, which was the owner of the land. He did not understand why the petitioner did not have a representative, such as an attorney, to walk the paperwork through and act as his proxy at the meetings.

However, in the text amendment case regarding the M.O.R., Mixed Office-Residential Design Guidelines, it made sense for the City staff to act as the petitioner rather than picking one property owner out of the entire Zoning District to represent all of the property owners in the district. Although he did not understand the need for the City to act as the petitioner, he was not uncomfortable with it from a standpoint of a conflict of interest. He was uncomfortable with it in that he believed that it was not well understood by the people who attend the meetings.

His primary concern was that the By-Laws might not reflect the actual process. He mentioned that he was comfortable with the process; however, the fact that the Plan Commission was having this discussion might mean that in those types of cases where the City staff acted as the petitioner, the Chair of the Plan Commission or City staff may need to explain what was happening to the public. Mr. Pollock felt this would not be a bad idea to practice.

Ms. Stake remarked that in the Walmart case, many people were upset, because it was a petition by the City. Some people did not get a chance to speak out against the rezoning, because Walmart was not the petitioner. Mr. Pollock responded by saying that he thought the Plan Commission handled that particular case in exactly the right way. Many people knew that someone had an interest in developing that land in a certain way, but when the Plan Commission looks at a case of rezoning, the members were not to look at whom the interested party was. The Plan Commission was to look at whether the rezoning was an appropriate rezoning for that area of land. The timing of the Walmart thing was unfortunate in that way, but the fact was that the Plan Commission was not suppose to consider who it was. The Plan Commission dealt with it the best that they could by explaining why they were looking at it in that way and what the timing of it was.

Mr. Douglas inquired if the landowner had to be public information? Mr. Kowalski answered by saying that all landowners are public information.

Ms. Goscha did not feel that the City acting as the petitioner did not pose a problem. She thought that the reason for City staff was to provide them with the professional insight into a decision, to look in to it legally, to look at the Urbana Zoning Ordinance and to provide the Plan Commission with all the necessary background as to why the Commission might make a decision. It was also City staff's job and profession to provide the Plan Commission with a recommendation. As she had experienced, sometimes the Plan Commission follows that recommendation and sometimes they do not. The Plan Commission, itself, was what protects the City with the very problem that Ms. Stake was concerned about, which was that the Plan Commission was there to hear additional evidence and make a decision based on a vote rather than a dictatorial rule that was automatically passed through.

Ms. Stake commented that even without talking about Walmart and only talking about whether that particular area was appropriate for big businesses or big boxes was not communicated to

many people. There were many people who did not want big boxes zoned there. Mr. Pollock stated that some people like big boxes and some people do not. Again, it was not a question of big boxes. It was a question of whether that piece of land was appropriate for a commercial designation and was it more appropriate for a commercial designation than it was as an industrial designation. He felt that the Plan Commission did that. To explain it a little further, Mr. Kowalski said that when considering a rezoning for a property and whether it was appropriate or not, the Plan Commission needed to understand everything that the Zoning Ordinance would allow for that zoning district. In the case of B-3, if the site were big enough, it would allow for a store the size of Walmart. If a property was rezoned to R-4, even though a petitioner stated that he/she intended to build a duplex, there was no guarantee that the petitioner would build a duplex, and he/she would be allowed to build an apartment building. This was something that the Plan Commissioners should always consider when considering a rezoning.

Ms. Upah-Bant was curious as to how the City staff decided when they would be the petitioner or when they would make the petitioner be the petitioner. Mr. Kowalski replied that it was not a strategic thing. Staff would always prefer that the landowner or developer come to the City stating what they would like to do, submit an application for that action, and present testimony at the public hearing. Most of the time, this is what happens, but there were times when staff worked with a landowner or a developer to try and achieve some goal. The landowner or developer ask City's staff to bring the case to a public process where the Plan Commission and the City Council could decide if the proposal met the goals of the City.

Ms. Upah-Bant asked if staff had never offered to be the petitioner? Mr. Kowalski responded by saying that staff was not knocking on doors and asking if the property owner wanted City staff to petition for his/her land. It usually comes about in talking to the landowners about a proposal, and many times staff will agree to be petitioner, if so requested by the landowner. Staff did not act as a petitioner in a way to try and ensure that there would be a greater success in something passing. It was a way to get the case on the table. Mr. Pollock added that the City of Urbana was clearly in competition with its sister city, the City of Champaign, so we need different forms of development to enhance our quality of life.

Ms. Upah-Bant agreed. Sometimes having a case presented by the City as the petitioner makes her look at the case in a little more favorably light. Mr. Kowalski reminded the Plan Commission of a case about 15 years ago, where the City acted as petitioner for a rezoning of about 250 properties in the West Urbana area.

Mr. Alix summarized his comments by saying that there were aspects of the process that clearly, in controversial cases, would be strained and would create ill will among the public. He believed that there would be ill will created regardless of what the process was. It was unavoidable. People who see the Plan Commission as a means to obtain what they want and do not obtain what they want are going to feel like the process was flawed. He did not see anything that obviously needed to be changed about the process. A Plan Commission member could make the argument that they need all the information, including who the landowner was, but on the other hand a member could make the case that based on what they were suppose to decide, maybe it was better if the Plan Commission did not know who the petitioner was. The Plan Commission should be making decisions solely based on the zoning. He only asked that staff have the City

Attorney to look at the By-Laws to ensure that the By-Laws reflect or were in conflict of what the Plan Commission was doing.

8. NEW BUSINESS

There was none.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

Mr. Kowalski reported on the following:

- ✓ **Meeting on July 8th**: The Plan Commission will be discussing the annexation and rezoning of 2209 North Willow Road. The MOR Design Guidelines would be coming back at that meeting as well.
- ✓ **Proposed Site Plan for Gateway Condominiums**: 9-1/2 acre vacant tract of land just north and east of the Melrose on North Lincoln Avenue. Although this had not yet been submitted as an application, the pending applicant was expecting to submit a petition and have this come before the Plan Commission within the next couple meetings. However, the pending applicant wanted the Plan Commission members to familiarize themselves with the rezoning. Mr. Kowalski briefly described the pending proposal, especially noting that the consideration for the Plan Commission was that it would be part of a Special Use Permit. He explained that the pending proposed tract was included as part of the Melrose tract that was considered as a special use.

Mr. Alix inquired what the general basis was for the special use permit was for Melrose? Mr. Kowalski answered by saying that it was a special use because it was a planned unit development. So, this would be an amendment to that.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

Prior to the adjournment, Chair Pollock announced that Mr. Douglas had stated that he was not intending to renew his membership on the Plan Commission. Mr. Douglas had business and other interests that would be taking up his time. Chair Pollock expressed that it had been a great pleasure to work with Mr. Douglas and commented that Mr. Douglas had been a valuable member of the Plan Commission, so he would be missed.

Chair Pollock adjourned the meeting at 8:42 p.m.

June 24, 2004

Respectfully submitted,

Rob Kowalski, Secretary
Urbana Plan Commission