MINUTES OF A REGULAR MEETING

URBANA PLAN COMMISSION **APPROVED**

DATE: **January 6, 2005**

TIME: **7:30 P.M.**

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

MEMBERS PRESENT:	Lew Hopkins, Randy Kangas, Michael Pollock, Bernadine Stake, Marilyn Upah-Bant, Don White
MEMBERS EXCUSED:	Laurie Goscha
STAFF PRESENT:	Elizabeth Tyler, Director of Community Development Services, Rob Kowalski, Planning Manager; Teri Andel, Planning Secretary; Steve Holz, City Attorney
OTHERS PRESENT:	Chris Alix, Glenn Berman, Brandon Bowersox, Liz Cardman, Elizabeth Cronan, Casey Diana, Helene Dickel, David Joncich, Donald Kibler, Linda Lorenz, Georgia Morgan, Esther Patt, Curtis Pettyjohn

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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 November 4, 2004 meeting of the Plan Commission as presented. Mr. White seconded the motion. The minutes were approved by unanimous voice vote.

4. COMMUNICATIONS

- Letter of Resignation from Chris Alix

Mr. Alix stated that he appreciated the time that he had spent on the Plan Commission and had enjoyed working with each member of the Plan Commission. He was very excited to see the Comprehensive Plan moving forward. He will continue to watch the activities of the Plan Commission during his brief tenure on the City Council. He hoped at some point to be able to serve on the Plan Commission again. Chair Pollock thanked him for the kind comments and for his service he had given to the City of Urbana.

5. CONTINUED PUBLIC HEARINGS

There were none.

6. OLD BUSINESS

There was none.

7. NEW PUBLIC HEARINGS

Plan Case # 1914-T-04: Request by the Zoning Administrator to amend the Urbana Zoning Ordinance with respect to over-occupancy of dwelling units and overall enforcement of the Zoning Ordinance.

Elizabeth Tyler, Director of Community Development Services, presented the staff report to the Plan Commission. She began by introducing Steve Holz, City Attorney, and by noting that Mr. Holz would be able to help with answering any questions the Plan Commission may have. She gave a brief background on the history of how the proposed text amendment came about. She discussed the elements of the proposed amended language, which included the following: 1) Property Owner Responsibility; 2) Clarification of Zoning Administrator Duties; and 3) Adjustment of Fines. She reviewed the summary of findings. Ms. Tyler read the options of the Plan Commission and presented staff's recommendation, which was as follows:

> *Based on the evidence presented in the written staff report, and without the benefit of considering additional evidence that may be presented at the public hearing, staff recommended that the Plan Commission recommend approval of the proposed text amendment to the Zoning Ordinance.*

Ms. Stake reread *Section XI-9.2. Fines*. She stated that she was confused about what the minimum fine would be per day. Mr. Holz replied that there would be a fine of at least $50.00 per day with an absolute minimum of $500.00 for a first offense. For example, if someone violated the ordinance for one day, even though the per day minimum is $50.00, the minimum total for the first offense would be $500.00. On the other hand for a first offense, if someone violated the ordinance for three months, then the minimum would still be $500.00, but it could increase because it would be $50.00 per day times 90 days.

Mr. Hopkins asked what day one of a violation would be defined as. In particular, if there was no notice requirement and there was a concept of conviction, which was not defined, there was a presumption that this would be enforced by consent, unless a lawsuit was filed. Was this

correct? Mr. Holz stated that a conviction would be something that he would have to make happen in court. Day one of a violation would be the first instance that he could prove in court.

Mr. Hopkins gave an example. If a landlord was charged with a violation and taken to court, the landlord might win or lose. Given the fine structure, the landlord might be rational and cease the action, even if it were legal, during the period of trial. If the landlord did this and won the court case, then he/she could sue the City for any losses incurred. Considering that there was no notice requirement and with the presumption that conviction was not always by consent, then the nature of the fine structure could be potentially problematic in that the City might be reluctant to enforce it because of the problems it would create in enforcement. Mr. Holz responded by saying that notice would come from two sources, which are as follows: 1) existence of the law and the landlord being educated about the law; and 2) after there would be a suspicion that a particular landlord had violated or may be in violation of the ordinance, notice could be a written letter from the Community Development Services Department saying, "Here landlord, here is the law, and we want to remind you that it was your obligation to know the law already, but the City is telling you again. This is the law and you are required to comply with it." No notice requirement did not mean that notice would not be given. Notice would certainly be given by simply the passage of the law. Every one of us has notice of the laws that are out there, and that we are required to comply with regardless of whether someone sends us a letter that we might be doing something wrong. The Community Development Services Department would still send warning notices of potential violations to landlords, particularly where the department might have reason to believe that a landlord might simply be acting on the basis of ignorance of this particular law.

Mr. Holz went on to say that there was a perception out there that there are some landlords who practice over-occupancy of their buildings whenever they can get away with it. For those purposes, it did not seem to make sense to have to send them a warning notice, so they can stop at one address and start it up again somewhere else, and then start the cycle all over again. The City would never be able to impose a fine, because they would have to send a notice first. There might be ways to tweak the ordinance for landlords who have never received a warning notice, but really the notion was to try and give the ordinance some kind of teeth. Ms. Tyler noted that the department did write notices on zoning violations and other violations almost weekly. The goal was to remedy the violation. Ninety-nine percent of the time, a warning notice would be all that would be necessary, because it was an awareness issue. There were very few cases that had been referred to the City Attorney's office.

Mr. Hopkins questioned if a fine would still be applied if a landlord received a warning notice and ceased any over-occupancy of his rental building. Ms. Tyler said no. These types of instances would not be referred to the City Attorney's office, so there would not be a fine. The over-occupancy problem would have been corrected.

Mr. Hopkins asked what constitutes "conviction". Mr. Holz replied by saying that "conviction" is something that happens in court. The City Attorney's office would have to file a complaint using proper court procedures by bringing someone in. The complaint would have to say what this person did to violate the City's laws. Then the whole court process would happen. The defendant would have a chance to respond to the alleged violation. If the defendant denies the charges, then the City Attorney's office would have to present evidence to the court to prove up

their allegations. Then, the judge or jury would decide whether the evidence would support the allegations or did not support the allegations.

Mr. Hopkins felt that clarifying the language in the text amendment would make a big difference in the sense of the "effect" of the proposed text amendment. It means that in 99% of the cases, the proposed fines would not apply when landlords complied with the law by consent, by observation, or by discovery. Mr. Holz mentioned that the proposed text amendment would be targeting repeat problems. Mr. Hopkins understood *Section XII-9.B* to mean that if a landlord received a warning notice, then he/she was considered convicted, and therefore, the fines would also apply.

Ms. Stake thought that the fines should be treated the same as with traffic violations. People can pay their fines without every having to go to court. Ms. Tyler pointed out that the City of Urbana did not really assess fines for zoning violations. The only time the City would assess a fine for a zoning violation would be parking on an unapproved surface. Mr. Holz added this would not be a ticket system. It would be an ordinance violation system. He would actually have to affirmatively charge somebody in court with a violation and then prove it up in order to get a fine assessed by the court.

Mr. White inquired as to how many people were put on notice that they were in violation of an ordinance like this. Ms. Tyler estimated that the Community Development Services Department investigated six to twelve cases of suspected over-occupancy per year. There may be three or four warning letters per year that are sent out. Very often there was some misunderstanding, and it would be resolved before the department had time to send the notice out. Mr. White questioned how many were chronic offenders? Ms. Tyler was uncertain but thought there might be at least two or three chronic offenders.

Mr. White commented that it seemed to him that the City went through a lot to investigate a complaint and to meet the property owner halfway if they resolved the over-occupancy problem on their own. Meanwhile, there were a few people who know that they are in violation of the ordinance, because they have violated it before. He believed that the penalties (fines) were way too small for repeat offenders. If the City went through all the effort to convict someone, then the fine should be a lot higher than suggested in the proposed text amendment. Rather than the minimum fine for a first offense be set at $500.00, the fine should be set at $2,000. He believed it was possible for a landlord to violate this ordinance and pay the small fines, and still be able to make money from renting out their property to more people than allowed.

Mr. Kangas pointed out that this ordinance was pulled out of a larger context. It was hard to read and follow, unless you had the other sections to follow.

Regarding *Section XI-9. Fines* of the Zoning Ordinance, Mr. Kangas inquired if the clock started running from the day the landlord was notified of the violation till the court made its decision. Mr. Holz replied that could be the case. Ms. Tyler noted that the fine could add up to be several thousands of dollars. Mr. Hopkins added that the start date would not necessarily be the notice date. The City Attorney could prove in court that the landlord had been violating the over-occupancy ordinance for years. Mr. Holz stated that was correct, however, there would be a statute of limitations that would apply going back at least a couple of years. There would

probably be a rare case under the ordinance violation enforcement where a city could get some hefty fines against a particular violator. That was why we have judges and juries, because their jobs are to help sort that out by not only determining whether or not there was enough evidence presented by a city to prove a violation, but also to determine how serious a violation is. This was the reason why there was such a significant range in fines being proposed from $50 per day to $1000 per day. It really gives the court a lot of latitude. It was important to remember that the court was a significant part of the process and was part of the protection for the city and a landlord.

Mr. Hopkins pointed out that if a landlord violated the ordinance by renting out an extra bedroom for 180 days, then the landlord could be fined $180,000. Mr. Holz said that was theoretically correct. Mr. White thought that the court would probably fine the minimum for a first violation. Mr. Holz replied that the courts tend to do that.

Ms. Stake read *Section XI-9.A.7*. She believed that it should say that "if the party was responsible". The way it was proposed to read sounded like the occupant would be responsible for the violation. Mr. Holz pointed out that *Section XI-9.A.7* was already written in the Zoning Ordinance. It was only underlined as an addition because it was moved from a different section. He clarified that the language in *Section XI-9.A.7* meant that when you look particularly at rental property, there were two principal groups of parties that could be responsible, which are the owner of the property and the tenant. The owner, under this language, would be considered to be prima-facie responsible, which meant that because he/she is the owner, it was to be considered by the court that there was enough evidence to charge him/her with the offense. It would still need to be proved. With respect to the language about the occupants, it meant that just because the owner would be prima facie responsible did not mean that the tenant was not responsible. Ms. Tyler added that there were cases where property owners have no knowledge of zoning violations. Ms. Stake felt that it should be worded more clearly. Mr. Holz noted that in the unfortunate language of "legalese", the language worked. They could certainly try to recraft it to make more sense.

According to *Section XI-9.B. Settlement of Violation Prior to Suit Being Filed; Minimum Fines*, Ms. Stake felt that the word "may" should be replaced with the word "shall". The word "may" always means that someone would not have to do something, and "shall," means that that they would have to. Mr. Holz stated that this section referred to *Section XI-9.C. Minimum Fine Schedule for Certain Violations*, which would be only for parking violations and temporary sign violations. These are our pay-to-mail provisions.

Mr. Hopkins suggested that they modify the language in Section XI-9.A.7. to read as such, "owners of land or structure". His example was the Gregory Place. People, who the city would want to be responsible as owners, did not own the land. The land was owned by the state. He hoped that this concept would increase in the City of Urbana, because it would be one way that the City could get tax revenues on state-owned property.

Liz Cardman, of 708 West California, fully supported the proposed text amendment. She felt it was sorely needed. She asked the Plan Commission to consider making a recommendation that the City of Urbana not just be reactive to this problem, but that they consider being proactive. Over-occupancy occurs in many college towns. Many of those towns educate up front, and some

even require that both the tenant and the landlord sign an affidavit indicating rights and responsibilities for both parties. It includes the knowledge of the legal occupancy limit of the property that the tenant would be renting. Another thing that some of the college towns have done as part of a rental registration program was to require that the landlord post the legal occupancy limit of the property. Therefore, rather than being strictly reactive and punitive, it would be forward thinking to also be proactive and try to minimize the need to put such a strict fine in place.

Dave Joncich, of 705 West Illinois, lived close to campus. He had lived in the City of Urbana for 36 years. He had seen nothing but the degradation of the quality of life. In the 700 block, there are 14 homes and his is the only single-family residence left. It began when some older couples rented out the upper stories of their homes to students, which became known as duplexes. Then there were some grandfathered rooming houses. All of these have become legally non-conforming, which means the property owners can rent the homes out now because it was done so in the past. This was not the residential neighborhood that he purchased a home in 1976. It had become overrun with rental properties.

The owner of the house next door bought the property with an illegal lease sign for five occupants in a neighborhood zoned for four, unrelated adults. Mr. Joncich had called the City several times in the last five years, and City staff cannot catch the tenants in violation. The City staff calls ahead to let the tenants know that they are coming out to inspect, and any extra occupants disappear.

He went on to say that Mayor Satterthwaite owns a house in the 700 block of High Street, which is zoned single-family residential. He rents the house out as a duplex. He asked how the City was going to clean up the mess of over-occupancy when the Mayor was part of the problem.

All the properties being run down by being used as rental property are subtracting from the tax base. All this text amendment is saying is let's put everything on an equal basis. If you want to have a landlord buy a property and rent it, then make it legal.

Ms. Stake did not understand how there could be homes with four people living upstairs and four people living downstairs and it be called a duplex. Ms. Tyler responded by saying that this related to the downzoning effort from the Downtown to Campus Plan, where there was a parcel by parcel survey of properties. The zoning went down, but in some cases, if it could be proven that there was occupancy as, for example, a rooming house at a certain date, then the property owner was allowed to continue to rent it out as legally non-conforming duplex, triplex, rooming house, etc.

Mr. Joncich commented that the City was allowing this to happen to properties that border the University of Illinois campus. If the landlord gets caught renting to more tenants than allowed, the tenants suffer because they have to move out, but the landlord does not even get fined.

Esther Patt, of 706 South Coler Avenue, noted that she used to live on the corner of Busey and Illinois for 20 years, just down the street from Mr. Joncich. She clarified some of the things that Mr. Joncich had talked about. On the corner of Busey and Illinois are two structures that were once houses, but were converted to apartments long ago. They look like houses on the outside.

At 711, there was a single-family home that was grandfathered in as a rooming house. It can be legally occupied by more than 4 people. Somewhere else on the block is a duplex. There are a number of homes on the 700 block that are single-family homes that are used as rental properties and should not be rented to more than 4 people. Quite often these homes are rented to more than 4 people.

Ms. Patt shared Mr. Joncich's frustration with the general problem that there is no fine for violating the Zoning Ordinance. She mentioned that she works for the Tenant's Union, and she had been dealing with over-occupancy in her job for over 25 years. The tenants pay the price for over-occupancy, while nothing happens to the landlords. She gave many examples of her experience in dealing with over-occupancy.

The Tenant's Union tries to educate students shopping for places to rent. If the landlord does not state that no more than 4 tenants are allowed, then how are the tenants suppose to know which houses are legal and which ones are not? The City needed to start holding rental property owners responsible for violating the law.

Ms. Patt stated that the house that Mayor Satterthwaite owns at 703 West High Street had been a duplex since before 1975. So, he was not breaking the law.

Ms. Upah-Bant asked Ms. Patt what range of fines would be effective? Ms. Patt felt that repeat offenders should be fined more than they make in rent for a year. Some people obey the law, because it is the law. The whole dynamic is that there are property owners who are not aware that it was against the law. If the City took a proactive stand and began fining landlords, then there would not be very many who would take the chance of violating the law. The main thing would be that the fine be enough trouble to the property owner so they would stop violating the law, and the fine should be high enough to make it worth the City's while to prosecute.

Mr. Hopkins understood the dynamics that Ms. Patt had talked about. However it left him wondering how the proposed text amendment would change any of the things she described. The issue at the moment was that the City did not seek to convict violators. The City simply accepted compliance. The proposed text amendment would do nothing to change that. Ms. Patt stated the proposed text amendment would make it a violation of the Zoning Ordinance to offer a property to lease to more than allowable. It would make it easier to hold the landlord responsible when the responsibility was the landlords.

Mr. Kangas questioned if it was fair to say that the proposed text amendment would not change the enforcement aspects of any of the zoning issues. Nor would it change what was a violation. It would change the consequences for being in violation of the Zoning Ordinance. Mr. Holz commented that the proposed text amendment would effect what was considered a violation. It says that it would be a violation to offer or attempt to lease to more people than allowed.

Ms. Patt proposed adding the point of offering a place to lease, because at the point of offering a place to lease was when the landlords who knowingly violate the law are totally upfront about what they are doing. They will tell the house shoppers how many people are allowed to live in a house. The main change was that the proposed text amendment would allow the City to levy a

fine on the responsible violator, whereas currently, the City cannot do anything to the property owners who lease to more than allowed.

Mr. Hopkins felt that $500 minimum would not be worth it to the violators to stop the illegal activity. Ms. Patt stated that there would be no violation if the extra person moves out.

Glenn Berman, of 611 West Washington, supported the proposed text amendment. He advocated for a higher fine structure of $500, $1500, and $2500 than the one being proposed. Some landlords would take the risk of a $500 fine against a $4200 revenue.

He believed that West Lafayette had made the most progress. Their initial fine is $1500 for the first offense and $2500 for each subsequent offense. He did not advocate this fine structure, because of the issue of violations of ignorance that happen on the part of landlords and tenants who are unaware of the ordinances that the City of Urbana have in place. However, he supported the consideration in the future of an occupancy affidavit program. Through a program like this every rental property must be registered with the city. Every rental property registered with the city would be required by law to submit an affidavit with the signing of every lease. The affidavit would be signed by the owner of the property and by all of the tenants. So, everyone would say that they understand what the occupancy limits were in the city, and they realized what the fines were if they chose to violate them. As a result, there would be no violations of ignorance. For repeat offenders, the owners might face suspension of their rental certificate, and they would not be able to rent to anyone. He encouraged the City to adopt such a plan.

Curtis Pettyjohn, of 907 South Orchard, expressed his appreciation for the time and work that the Plan Commission serves. He went on to say that neighborhoods are fragile. They were working very hard to keep a sense of some kind of control over the problems that were continuing to deteriorate the neighborhoods. The proposed text amendment was an opportunity for the City to give the neighborhoods some strength and possibly work towards eliminating the problem of over-occupancy in the West Urbana Neighborhood Area (WUNA). He urged the Plan Commission to forward this case to the City Council with a recommendation for approval.

Linda Lorenz, of 409 West High Street, agreed with Ms. Cardman and Mr. Berman's comments. She believed that the City needed to be pro-active. There needed to be truth in advertising. There were two houses for rent one block away from her house. Both of the houses were listed as five bedroom houses. This meant that at least five people would rent each house to split the rent on a single-family dwelling. Was there some way that the City could include in the text amendment that states that property owners could not have a sign in front of their rental homes which advertised five bedrooms unless the sign noted that the legal occupancy was four people? Was there something that could be added to say that property owners could not list their rental properties in the newspapers or on the Internet that says five bedrooms, but only four people legally can rent the home? Ms. Tyler stated that such an advertisement or a lease with co-signings would provide the City with good evidence to prove a case in court. Ms. Lorenz could alert the City staff of such advertisement, and then staff would go out and collect that evidence. Mr. Pollock commented that it would be the neighborhood that would help City staff to enforce the ordinance. If anyone had information that a violation was occurring, then they should contact City staff and provide whatever evidence they could.

Ms. Lorenz stated that the neighborhood would need to be informed of the ordinances in order to provide that assistance, because there were many people, including the tenants of over-occupied homes, that were not aware of the rules. This is why she encouraged the City to include in the proposed text amendment that signs could not be placed in front of the rental properties advertising five bedrooms without stating that only four people could rent them.

Betsey Cronan, of 305 West High Street, mentioned that she also owned rental property in the City of Urbana. As a landlord, it was very simple to include a phrase in the lease that says the rental property could only have a certain number of tenants residing in the dwelling. She agreed that the City needed to hold landlords to responsible standards. Rental property owners could still conform to the law and still make plenty of money. She encouraged the Plan Commission to approve the proposed text amendment.

Ms. Tyler talked about other suggestions that had been mentioned during public testimony. Parking enforcement of people parking their vehicles on unapproved surfaces was dealt elsewhere in the Zoning Ordinance. She commented that in a lot of ways this was even harder to enforce the over-occupancy. It was another big issue, and it was compounded by needing to understand at what point was the parking allowed. The City currently did not have an area limit on parking spaces allowed. They did have an Open Space Ratio (OSR), but it was not high enough to really prohibit these situations. If there was a pre-existing parking area in the rear of a house and the property owner refreshed the gravel, then that was not something the City could enforce against. It was a temporal situation, which drove people mad. It was probably the City's worst enforcement challenge. This problem was something that City staff and the neighborhoods have continued to brainstorm on for solutions. Hopefully some day, the City would be able to have some corrections for it.

Ms. Tyler spoke about the rental registration program. The University Neighborhood City (UNC) Group had discussed the possibility of starting up this program in Urbana. It seemed to be the consensus of the group that this would be a very helpful program to pursue. Ms. Cardman had done a lot of research and found many models that the group had looked at. It would be a fairly major new program and a new approach for the City of Urbana. It would take more time to research and time to set up. It would require additional staffing. Hopefully, City staff would be able to set up a target to get this program up and running. It would be a big change for the City of Urbana to be doing this, especially when the City of Champaign was not practicing a rental registration program. However, when looking at other college communities, the rental registration program was very common, and it was almost unique that the City of Urbana did not have such a program already. Such a program would need to require some fee collection, because the City did not have the staff. There are roughly 8,000 rental units in the City of Urbana. Even to do the affidavits, which seemed to be a simple enough procedure to do, 8,000 affidavits each season when there were re-rentals would be a huge undertaking. If it was done as part of rental registration where there was say a $25.00 per unit fee to be registered in Urbana, then that would allow the City to have some clerical staff funding to do that. These are some excellent ideas that City staff had worked on with the UNC Group, and there was a lot of city support for pursuing this type of thing.

Ms. Tyler discussed the posting of occupancy limits. Mr. Holz had done quite a bit of research on how this had been done in other locations. The City of Urbana had run into some real concerns with bringing this forward. Primarily, if the City posts the limit inside a rental unit, then the City would not have control over where it would be shown or how it would be presented, whether it could be changed or removed. City staff would need search warrant type of capabilities to keep control over this. If it was outside of the unit, was it visible? If it were visible enough so that everyone knows a certain house was single-family and could be occupied by no more than four unrelated adults, then they would be telling the world that the City of Urbana has occupancy problems in this neighborhood. It would add to the degradation of the neighborhood not being as much a single-family neighborhood. So, the UNC Group talked through these concerns and decided to take some other approaches. One approach was a brochure that was sent out to all of the rental properties in the area that said loud and clear what the occupancy limits were. The WUNA group raised some funds to place a display ad in the Daily Illini when school began. The UNC would like to see the University of Illinois join them in these types of efforts, because the University did have the captive email accounts and new student orientation opportunities.

Ms. Tyler discussed the inspection difficulties with over-occupancy. Over-occupancy was elusive. Tenants move beds, remove the extra toothbrushes, change the names on the mailboxes, and it gets pretty intrusive real fast. The City was not in the business of regulating co-habitation or lifestyles. The Housing Inspector was very sensitive and very good at working with people, but over-occupancy could be elusive. Offering to rent to more people than allowed was not as elusive and could be easier to prove in court. Signs and misleading leases could not be taken back.

She mentioned the downzoning of some properties in WUNA. Downzoning was done to protect the property rights of people who had invested in the converted homes long ago. It was a responsible way to stem the tide of increased densities in WUNA. City staff felt that it had been successful, but it was difficult to monitor. There are banks of files on each property and what their proper Certificate of Occupancy was.

The proposed text amendment was a partial approach to solving one problem. It would not solve all the problems in WUNA or all the problems with over-occupancy. It was just one approach, and there are other ideas. When she talked early on in the staff report about how often City staff received complaints, she was only referring to bonafide complaints that staff had been able to investigate. It was not a survey, in which she was sure they would be able to detect more cases of over-occupancy violations.

People feel exasperation about the over-occupancy issue. However, unless residents in the neighborhood call and complain about possible over-occupancy violations, then she could not have the City inspectors investigate. She stated that duplexes, which no longer have a connection separating the two units, would no longer be considered duplexes. They would no longer fit the definition of a duplex in the Zoning Ordinance. With addresses and complaints, City staff could investigate. These would be use violations, and property owners could lose their rights to legal non-conformities by removing what made it a duplex to begin with.

Ms. Tyler commented that fine recovery was not really a motivation for City staff. With the amount of time it takes to put a case together, the Legal staff and the follow through, the City would not receive enough money back. There would still be the same work plan and the same amount of staff. The bigger reason why the City has trouble pursuing over-occupancy to the courts was because of the staffing level and the City's desire to help people conform. There was a fine line between being a tough community and being a community that was friendly to its residents.

Mr. White inquired about the list of people renting properties. Ms. Tyler clarified that staff has property listings and records on the status of the properties. The tax assessor would be able to show whether it was owner occupied or an income property. Mr. White asked if it would be possible to send the property owners a copy of the Zoning Ordinance. Ms. Tyler stated that staff put an article in the newspaper regarding the proposed text amendment, sent a copy of the proposed amendment to the Champaign County Apartment Association, and put a legal notice in the paper regarding the case coming before the Plan Commission. It would be a big notification effort to notify each property owner.

Mr. White wondered how many people bought a five-bedroom home thinking that they could rent to five students. Ms. Tyler believed that the landlords understood the occupancy limits in both Champaign and Urbana. Mr. White questioned if that was the case, then why not raise the amount of the fines. Ms. Tyler stated that they were looking at setting fines for all zoning violations. Another initiative that had not really been discussed was the Zoning Hearing Officer that Champaign County was looking at creating. The Zoning Hearing Officer would hear complaints and set fines. He/She might be more likely to set higher fines, because they would not be comparing these violations with crimes like homicides and manslaughter. Mr. Holz mentioned that with setting fines, there was a good bit of arbitrariness in the process. Who would really know what would be the appropriate level? There was the same problem in the criminal context in that they do not know what to set as a proper range of sentencing for a particular type of offense. Ultimately the question was going to be whatever set of ranges or fines that the City chose, put them into play and see how they work, and then decide whether or not they need to be adjusted. He did not think that there was anything outrageous about the suggestion Mr. Berman had for the fines to be set at $500, $1500 and $2500. Mr. Pollock questioned if the Plan Commission or City Council decided that they wanted stiffer fines on over-occupancy violations, then could they set a separate fine structure from other types of violations. Mr. Holz replied that it would be perfectly okay to set a separate structure for one category of violations and another structure for another category.

Mr. White believed that a person convicted of a third offense of the same violation should pay a much higher fine. However, a person who commits three different types of violations should not have to pay that high of a fine, because there are many people who do not know the Zoning Ordinance and might be unaware that they committed a violation. Mr. Holz stated that because the discussion was focusing on the landlords being the violators, they had not discussed tenants being the violators. He did not want to give the impression that the renters, who were often students in this particular part of town, were complete innocent lambs. He believed that often the landlords who wanted to do this and the students who wanted to do this find each other and work together to make it happen. Fines could be applied to renters as well as landlords.

Ms. Upah-Bant was concerned about the enforcement issue of proving over-occupancy on behalf of the renters. The proposed text amendment did not address this concern. Mr. Holz reiterated that enforcement of occupancy levels was difficult. It is hard to prove what makes a person a permanent resident. What exactly makes an occupancy violation? This was why he liked to move the enforcement of it up front into the "offer" stage of the process. Ms. Upah-Bant felt that would address part of the problem, but a great deal of the problem was what Mr. Holz had just described with boyfriends and girlfriends moving in with each other on a temporary basis, friends coming to visit for a few weeks at a time, and people coming over from other countries for a short while. The students are in transience all the time.

Mr. Hopkins inquired how many court actions had the City taken in the last three years in relation to the Zoning Ordinance. Mr. Holz answered less than ten. Many of the court cases had to do with property maintenance rather than over-occupancy. Mr. Hopkins asked if there had ever been a case on occupancy that was taken to court. Mr. Holz replied that he had never in his time with the City prosecuted an occupancy violation in court.

Mr. Hopkins stated that the City could set any minimum fine structure they want and they could improve their ability to get evidence, but if the City never took a violator to court, then it did not matter. The issue was the risk of enforcement action, and that currently was at zero. Mr. Holz responded by saying that was part of what staff was getting at. The way the Zoning Ordinance was presently written and the way City staff was trying to change it was addressing not just the "offer" stage of the violation, but also the notice aspect of it. This was the reason why staff wanted to remove the notice part of the ordinance. Staff had previously always had to go through the notice process, and through the notice process was when the City gets compliance. When violators get caught, they never see it as their fault. Tenants and landlords blame each other. He was willing to deal with that as long as he had an enforcement tool that would work. Currently, he does not have an enforcement tool that will work, which was why occupancy violations do not go to court.

Mr. Hopkins agreed that making changes to the proposed fine structure would probably not make that much difference. However, he found that there was an inconsistency between paragraph 2 and paragraph 5 under *Section XI-9.A Fines* of the proposed text amendment. Language was being proposed that says each offense would have a minimum as an offense that would be greater than the minimum per day. Mr. Holz agreed that it could use more crafting in the language. Paragraph 2 talks about minimum fines of $500 for the first case, $750 for the second case and $1000 for the third case; not days. A case is when he brings a charge against a landlord. The way he intended for it to mean was that $50 to $1000 could be fined per day, with a $500 minimum for the total case.

Mr. Hopkins stated that the point was that somehow in the proposed language there was quite a bit potential to levy huge fines if a case went to court. If someone went to court 180 days after being notified of violating the ordinance and the court found in favor of the City, it would be around $90,000. The City may not be a profit making business, but the threat of a landlord paying $90,000 in fines was at least worth reading the newspaper for. Therefore, the problem was not in the details of the fine structure, but in the opportunities for evidence. Mr. Pollock remarked what counts was who was liable to pay the fine. With the current Zoning Ordinance, landlords do not pay fines. Students/renters are not going to be fined $90,000. The proposed

text amendment allows the City to fine the landlords, which would be the major change in the ordinance. Mr. Hopkins replied that there was nothing in the current Zoning Ordinance preventing the City from fining landlords in violation. Mr. White commented that nothing was going to change until the City started taking violators to court. Ms. Tyler pointed out that judges usually ask first if the case had been abated. The proposed text amendment would help prevent the abatement before the fact. When it comes to fines, since they have violators more serious than zoning, judges tend to set fines at the minimum level. Mr. Hopkins stated that with cleaned up language, he would accept the proposed fine structure, because the minimum was low enough that it could be applied to any of the violations in the Zoning Ordinance.

Ms. Stake understood that property owners have to get a Certificate of Occupancy before they can rent units out. Mr. Holz stated that any property that gets occupied had to have a Certificate of Occupancy issued to it at one point, but that was not something that repeats over and over again. Ms. Tyler noted that if the City did the rental registration program, then that would be another way to monitor and control. Ms. Stake believed that the City should begin that program now, because staff was saying that they could not enforce the ordinance. Landlords should have to pay enough to pay for the extra staff needed to run the program.

Mr. Hopkins moved that the Plan Commission forward the case to the Urbana City Council with a recommendation for approval with the following modifications:

1. *Section XI-9.A.7. Fines* should read as follows: ***"Except for Section VIII-3, the owners of the land or structure upon which a violation of this Ordinance ..."***
2. *Section XII-9.B. Penalties* should read as follows: ***"~~If there is a willful violation of the provisions of this Article, a~~ Any person, firm or corporation ~~shall be deemed guilty of~~ willfully violating this article of this ordinance ~~and~~, upon conviction, shall be ..."***

Mr. Pollock asked Mr. Holz if the modifications met with his approval. Mr. Holz replied that he was fine with everything except for the word "willfully". He preferred the word "knowingly". Mr. Hopkins was in agreement.

Ms. Upah-Bant seconded the motion. Roll call was as follows:

Mr. Hopkins	-	Yes	Mr. Kangas	-	Yes
Mr. Pollock	-	Yes	Ms. Stake	-	Yes
Ms. Upah-Bant	-	Yes	Mr. White	-	Yes

The motion was passed by unanimous vote.

8. NEW BUSINESS

There was none.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

Mr. Kowalski gave a staff report on the following:

- **Next Scheduled Meeting** will be held on Thursday, January 20, 2005. There would be a number of cases including a special use permit for a cell tower equipment enclosure, a text amendment addressing accessory parking lots in residential areas, and possibly an amendment to the annexation agreement and subdivision plat for the Prairie Winds development on East Colorado Avenue.

11. STUDY SESSION

Comprehensive Plan Update – 2005

Mr. Kowalski discussed the following:

1. Steps to Completion from 2001- 2005
2. System of Plans
   A. Neighborhood Plans
   B. Strategic Plans
   C. Agency Plans
   D. Intergovernmental Agreements
3. Trends and Issues
4. Vision Statement
   A. Who are we?
   B. Where do we want to go?
   C. What do we value?
   D. How will we get there?
5. Cornerstone Goals
   A. Quality of Life
   B. Growth and Sustainability
   C. Services and Infrastructure
   D. Mobility
6. Goals and Objectives
   A. Goal
   B. Objective
   C. Implementation
7. Future Land Use Concepts
8. Future Land Use Concept Maps
9. Implementation Matrix
10. Mobility Map
11. Highlights/Differences
12. Next Steps

Ms. Stake believed that another workshop would be better than an open house. Mr. Kowalski stated that the workshop was very useful and beneficial in the beginning when they were brainstorming for ideas and looking to get thoughts and input on strengths and weaknesses.

However, at this point, the draft was ready and was up for consideration and adoption. An open house would be ideal so people could review the work that had been done and give comment on the plan.

Ms. Upah-Bant inquired if City staff would be providing a shortened version of the Comprehensive Plan when it is finalized. Mr. Kowalski noted that City staff still wanted to do a poster version of the Comprehensive Plan. It would have the highlights on the back of the poster. He mentioned that they would also like to get some assistance from a local media company to help put a software program on the discs, so that people will find it easier to find sections that they are specifically looking for.

Mr. Hopkins believed that the six hot spots were important. When City Council adopts a final plan, an ordinance would be assigned. There are two simple ways to think about what that adoption means, which are either: 1) Staff watered down the content of the plan, so that it did not mean enough to anyone for them to worry about whether City Council was making any decisions when they adopt the plan, or 2) Admit and acknowledge that choices were being made and staff was open about what they are. Because of the three years of discussions, there were things in the plan that people would know they disagree with, know they have told the City that they disagree with, and do not want to be included in the plan. When the Plan Commission makes a recommendation to the City Council, being true is what they would end up highlighting. Mr. Kowalski commented that it was easy to get wrapped up into one specific property. Staff and the Comprehensive Plan Steering Committee were hoping that they would be able to go through the public hearing process and have resolved all those issues.

12. ADJOURNMENT OF MEETING

Chair Pollock adjourned the meeting at 10:25 p.m.

Respectfully submitted,

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Rob Kowalski, Secretary
Urbana Plan Commission