

MINUTES OF A REGULAR MEETING

URBANA PLAN COMMISSION

APPROVED

DATE: February 5, 2009

TIME: 7:30 P.M.

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

MEMBERS PRESENT: Tyler Fitch, Ben Grosser, Lew Hopkins, Bernadine Stake, Don White

MEMBERS EXCUSED: Jane Burris, Michael Pollock, Marilyn Upah-Bant

STAFF PRESENT: Robert Myers, Planning Manager; Jeff Engstrom, Planner I; Teri Anandel, Planning Secretary

OTHERS PRESENT: Liila Bagby, Gail Barman, Kyle Clapper, Katie Cowlin, Julia Crowley, Ayesha Johns, Katie Keller, Vicki Kesman, Daniel Lima, Sarah Scott, Edward Tsery, Feng Wang, Jack Washington, Jackie Wilkoz

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

Ben Grosser called the meeting to order at 7:30 p.m., the roll call was taken, and a quorum was declared present with all members present.

NOTE: Ms. Stake moved that Ben Grosser serve as Acting Chair in the absence of Michael Pollock. Mr. Fitch seconded the motion. The Plan Commission agreed by acclamation.

2. CHANGES TO THE AGENDA

There were none.

3. APPROVAL OF MINUTES

Mr. White moved to approve the minutes of the January 22, 2009 meeting as presented. Mr. Hopkins seconded the motion. The minutes were approved by unanimous voice vote.

4. COMMUNICATIONS

- ✚ Planning Commissioners Journal – Winter 2009
- ✚ Planning Commissioners Journal – Taking a Closer Look – Design & Aesthetics
- ✚ Planning Commissioners Journal – Taking a Closer Look – Ethics & the Planning Commission
- ✚ Planning Commissioners Journal – Taking a Closer Look – Food, Farmland & Open Space

5. CONTINUED PUBLIC HEARINGS

Plan Case No. 2081-T-08: Amend the Urbana Zoning Ordinance by adding Section VI-8, Outdoor Lighting Standards.

Jeff Engstrom, Planner I, presented this case to the Plan Commission. He provided a background on the City's regulation of lighting. He cited other nearby cities currently having lighting ordinances and about the benefits of having regulations in place, including security. He discussed energy conservation by directing light where it is needed, lighting context, and light levels. He explained how the proposed ordinance relates to the 2005 Comprehensive Plan. He further discussed the proposed text amendment by reviewing the purpose of the amendment, definitions, applicability, requirements and lighting exceptions. He read the options of the Plan Commission and presented staffs' recommendation, which was as follows:

Based on the evidence presented in the written staff report, and without the benefit of considering additional evidence during the public hearing, staff recommends that the Plan Commission recommend approval of the proposed lighting standards text amendment to the Zoning Ordinance in its entirety.

Mr. Fitch asked why City staff chose to take the approach of only allowing 33% of the lighting fixtures to be left on after hours rather than lowering light levels altogether. Mr. Engstrom responded by saying that after looking examples of other ordinances, he found that the cities regulate this in different ways, but most of them regulate using the fixture level because it is easier to count the number of lights that are turned on rather than trying to determine the level of a light.

Mr. Fitch asked if a business left the brightest lights on, how would the City deal with this? Mr. Engstrom explained that all lights, including security lights, will be subject to the light trespass limits.

Mr. Fitch inquired about the provision that states, "Average initial light levels at ground level shall not exceed one foot-candle in residential zoning districts...". Does this apply to R-4 Zoning Districts and higher? Mr. Engstrom replied that it applies to usages of multi-family residential, not just the zoning districts.

Mr. Fitch questioned how a person would figure an AVERAGE of one foot-candle. How can you measure the average of a site with a light meter? Mr. Engstrom stated that the only way to

determine light averages is using a computer model. This would be something that the City would require the developers to submit with their site and construction plans.

Ms. Stake inquired as to why City staff would only require businesses to comply on a “complaint basis.” Mr. Engstrom pointed out that to proactively inspect for violations, City staff would have to work at night and drive around to look for violations. The City doesn’t have that capability.

Mr. Grosser wondered if there would be a device used to measure light levels at a particular point. Mr. Engstrom said yes. City staff has a device that measures light levels in foot-candles.

Mr. Grosser questioned if City staff had considered requiring flag lighting to go off at dusk. Mr. Engstrom explained that it is an accepted practice with the American flag (and possibly with the state flag) that if the flag is not taken down at night, then it needs to be lit.

Mr. Grosser commented that the exception for lighting in single-family residential appears to be primarily concerned with street lighting in areas where there is not currently any street lighting. However, it seems to him that some of the purpose of the proposed text amendment is to avoid light pollution. A large portion of the City is taken up by single-family residential. So, did City staff consider extending the proposed text amendment to the rest of single-family residential lighting? Mr. Engstrom responded that after much discussion, City staff determined that it would be unrealistic to require a lighting plan for outdoor home light fixtures, and practically impossible to enforce.

Robert Myers, Planning Manager, asked how do we make single-family homeowners turn in lighting plans? Many times developers leave it up to the future homebuyers to choose where they would like their homes to be constructed on lots in new single-family subdivisions, which affects where the lighting would be placed. Many home lighting fixtures are put in a single-family home after the development and building plans have been reviewed.

He stated that the proposed text amendment does not pertain to existing development except for nuisance lighting. It really pertains to new commercial, industrial and multi-family development. It would be too complicated and impractical to require it for single-family residential as well.

Ms. Stake asked why the ordinance is written to not take affect until July 2009. Mr. Engstrom responded that there are many projects in the pipeline. The developers of these projects probably already have the lights ordered. Since the development review process is long, it is basically to help ease builders into the new requirements.

With no further questions for City staff from the Plan Commission, Acting Chair Grosser opened the hearing up for public input and testimony. With none, he closed the public input portion of the hearing and opened it up for Plan Commission discussion and/or motion(s).

Mr. Hopkins expressed his concern about the following:

- ◆ Section C: The structuring of the Applicability section should be reorganized. It should begin with a general statement and then list the exceptions. The statement that “everyone must submit a lighting plan” should be mentioned under Section D – Requirements.
- ◆ When staff talked about using nuisance to enforce one of the examples Mr. Myers gave, was it general nuisance? Was it the notion of nuisance as common law, independent of whether something is in an ordinance or is there a nuisance ordinance that the City has in which there is explicit discussion of lighting? There are references in the proposed text amendment that refers to a rule or common law that he believes can already be enforced. If they are going to rely on the Zoning Ordinance to enforce the lighting regulations, then they need to be specific about what constitutes an exception and what does not. It should also be clear that the proposed text amendment does not in any way undermine a citizen’s ability to bring a nuisance complaint about lighting.
- ◆ He expressed his concern about the number of fixtures as a way to measure the amount of after hours lighting. He understands that it is easier to count the number of fixtures that are left on. It might make more sense to dim all of the lighting fixtures. Otherwise, the City will be making it necessary for a business to not light all of their property or to light it less uniformly. For security purposes, a business owner would want to do the opposite. Given that this only applies at the building permit stage for commercial and multi-family residential, the calculation of the level of lighting would be on the applicant.
- ◆ Section E.4 and E.5 are contradictory and confusing in that the proposed text amendment says one thing and the exceptions listed in the text amendment imply another.
- ◆ Regarding Section E.6, he looked up the definition of a “flag” in the Zoning Ordinance. The definition is “any banner held on one side to a pole”, which is a physical definition and not a content definition. So, he could have a flag/sign saying anything as big as he wants and he can light it in any way that he wants without restriction. This creates a problem. Mr. Myers stated that the sign ordinance avoids a content basis for regulation, and if they try to define a “flag” as something particular such as the American flag, then we would be regulating content. He mentioned that this same issue has been all the way to the Supreme Court. A land use law expert at Washington University advised City staff to avoid defining the content of a flag. With regards to the size of a flag, the City would be entering slippery territory legally. Mr. Hopkins stated that a couple of ways to approach this would be either to not mention it in the proposed ordinance and the other would be to put it in a list which are subject only to the general nuisance principles of lighting.
- ◆ Under Section E.8, he did not understand why ATMs are an exception. Mr. Engstrom explained that an area lighting professional had told him that there are very specific rules for ATMs. ATMs are required to have brighter light levels and even more specific uniformity ratios. City staff felt that they should go by what is in the guidebook and not make ATMs subject to the general provisions. Mr. Hopkins suggested that they word it differently to clarify that lighting standards do apply to ATMs, but that they are required to follow a specific guideline.

Mr. Grosser wondered if there is a definition for “other high risk areas”. Mr. Engstrom said the ordinance doesn’t define that.

Mr. Grosser asked Mr. Hopkins to clarify his concerns on Section D.2. Was Mr. Hopkins suggesting that staff remove the word “nuisance” from the sentence? He feels that single-family residents should be able to question a light that they see as a nuisance, and the Zoning Ordinance should address this. Mr. Hopkins stated that he believes it is important not to impose the building permit review process on single-family and duplex residential uses. In that sense, the bulk of the proposed ordinance does not apply. However, it goes back to a general principle that exceptions to the ordinance do not change the responsibility to avoid nuisance lighting situations. In other words, the ordinance does not enable or make it permissible to create a nuisance just because a single-family residence is an exception in the ordinance.

Mr. White commented that since the proposed ordinance applies primarily to new business construction, he believed it might be to the City’s advantage to have a lighting ordinance that deals primarily with nuisances in residential areas. It should emphasize what outdoor lighting should do, even existing outdoor lighting.

Also, he never understood how one would define a “nuisance”. What might be a nuisance to him might not be a nuisance to someone else. However, including language about foot-candles and distance in a Lighting Nuisance Ordinance would be helpful. He realizes that what he is suggesting is different the proposed Lighting Ordinance, and he does not know if the two could be in the same ordinance.

Mr. Fitch agreed that a Lighting Nuisance Ordinance would be helpful. He wondered what would happen if a business or multi-family structure is in fundamental compliance with the proposed ordinance and someone still deems it a nuisance, then what happens? Would they go to court? Should there be language in the proposed ordinance that there is a presumption against nuisance? Mr. Hopkins stated that this is precisely the issue. Mr. White commented that most nuisance complaints come after construction. Many probably even come after a light bulb has been changed. Mr. Engstrom pointed out that the nuisance provisions in the proposed ordinance would be enforceable to any property, not just new construction.

Mr. White felt that the nuisance provisions should be removed from the proposed ordinance and put in a different ordinance of its own. Mr. Grosser mentioned that there is a Nuisance Ordinance in the City Code, but not in the Zoning Ordinance or being proposed as part of the text amendment before them.

Mr. Myers added that the existing Zoning Ordinance requirements for nuisance lighting pertains just to parking lot lighting. Second, Mr. Myers commented that it is hard to create a measurable standard for every potential situation. It would be preferable in some ways to have numerical standards for light trespass, rather than a reference to nuisance lighting, but a reference to nuisance is still necessary to catch situations which might otherwise fall through the cracks using just numerical standards.

Mr. White felt that “light trespass” was clearly defined in terms of foot-candles and distance from the property lines. Mr. Engstrom stated that a light that may be a nuisance to one person might have a lower level and might actually be allowed under the trespass requirements. Mr.

White believes that “light trespass” is one way to solve some of the problems; although it will not solve all of the problems.

Mr. Grosser remarked that he agrees with Mr. White and Mr. Fitch in that something more specific be created for residential areas. He also acknowledged that the Comprehensive Plan directive was specific to commercial uses.

Mr. Myers agreed having a section for lighting nuisances would clarify things for the average person trying to read the Zoning Ordinance and help them understand how it applies and where.

Mr. White commented that it would help define a nuisance of a lighting trespass if they included a table stating the maximum number of foot-candles and distance from the property line. He realizes that they cannot define all nuisances.

Ms. Stake stated that she is really happy to see the Plan Commission take the time to discuss the proposed text amendment. It seems more and more complicated the more they talk about it. She agreed that they need to think about lighting standards for residential as well.

Acting Chair Grosser continued the case to the next scheduled meeting.

6. OLD BUSINESS

There was none.

7. NEW PUBLIC HEARINGS

There were none.

8. NEW BUSINESS


There was none.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

Mr. Myers reported on the following:

 Mervis Recycling Special Use Permit was approved by the City Council on Monday, February 2, 2009.

11. STUDY SESSION

St. Mary's Road Corridor Plan

Robert Myers, Planning Manager, presented a brief study session on the St. Mary's Road Corridor Plan. He discussed the following topics:

- ◆ Study Area
- ◆ Study Purpose
- ◆ Study Steering Committee
- ◆ Study Goals & Objectives
- ◆ Existing Conditions Analysis
 - ◆ Land Use and Development Findings
 - ◆ Transportation Findings
- ◆ Public Involvement
- ◆ Future Conditions Analysis
- ◆ Final Transportation Improvement Projects in Urbana
- ◆ Additional Transportation Improvements Projects
 - ◆ Near Term Improvements
 - ◆ Improvements by 2015
 - ◆ Improvements by 2025
 - ◆ Improvements by 2035
- ◆ Where Are We Now?

12. ADJOURNMENT OF MEETING

The meeting was adjourned at 9:05 p.m.

Respectfully submitted,

Robert Myers, AICP
Secretary, Urbana Plan Commission