

MINUTES OF A REGULAR MEETING

URBANA PLAN COMMISSION

APPROVED

DATE: February 19, 2015

TIME: 7:30 P.M.

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

MEMBER PRESENT: Corey Buttry, Tyler Fitch, Lew Hopkins, Dannie Otto, Christopher Stohr, David Trail

MEMBERS EXCUSED: Maria Byndom, Andrew Fell

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

OTHERS PRESENT:

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

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

2. CHANGES TO THE AGENDA

There were none.

3. APPROVAL OF MINUTES

The minutes from the February 5, 2015 meetings were presented for approval. Mr. Buttry moved that the Plan Commission approve the minutes as presented. Mr. Hopkins seconded the motion. There were no changes, and the minutes were approved unanimously by the Plan Commission as presented.

4. COMMUNICATIONS

- 2015 Official Zoning Map

5. CONTINUED PUBLIC HEARINGS

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

Chair Fitch re-opened this case. Christopher Marx, Planner I, presented an update for this case to the Plan Commission. He reviewed the concerns that the Plan Commission had expressed during the previous meeting and noted the following changes that City staff made to the proposed text amendment: 1) Adding criteria to the proposed definition of “gaming hall” that would distinguish gaming as a principal use rather than as an accessory use; 2) Reduce the permission of gaming halls in the B-4 and B-4E from a permitted use to require a conditional use permit; 3) Add Day Care Centers to be included with schools and places of worship in a required setback of 100 feet; and 4) Add a setback requirement of 100 feet between licensed gaming halls.

Chair Fitch asked the Plan Commission members if they had any questions. There were none. He, then, reviewed the procedures for a public hearing. He opened the hearing up for public input. There was none, so he closed the public input portion of the hearing and opened it up for Plan Commission discussion and/or motion(s).

Mr. Otto commented that he thought the City’s regulations should discourage the proliferation of gaming halls. He is not interested in changing the zoning to make it easier for corporate interest to come in and take money out of the community.

Chair Fitch asked for clarification on whether there were any current requirements for gaming as principal uses. Jeff Engstrom, Interim Planning Manager, replied no. If the proposed amendment is not adopted, then under the current regulations, the Mayor and City Council could create more gaming licenses and award them to either bars, taverns, or what are essentially gaming halls.

Chair Fitch asked what the purpose of the proposed text amendment is for. Mr. Engstrom explained that it is to allow City staff to keep track of gaming halls and to know when they apply for a Certificate of Occupancy what the principal use is going to be.

Mr. Stohr did not feel that 100 feet was very much distance. To locate a facility of the proposed kind so close to a school or place of worship would not be favorable. He asked how the 100-foot distance came about. Mr. Marx stated that it came from the state law. It is a conservative number, but the basis is to keep some separation. If the Plan Commission or City Council wanted, they could extend the distance if they want. He referred to Exhibit A, which shows the location of all existing establishments with a video gaming license in proximity to daycare centers.

Mr. Trail agreed that a 100-foot distance requirement sounded minimal. He wondered if the City could ban gaming halls without getting into any legal trouble. Mr. Marx replied that other communities have taken steps to define gaming hall as a use or to regulate it further than what

state law allows. Some communities have even taken steps to prohibit them in their communities. So, the City of Urbana is free to establish regulations as we see fit.

Mr. Trail asked if the City could limit businesses to the number of video gaming machines to constitute no more than 10% of their revenue. Mr. Engstrom said it might pose a legal issue because many existing bars are already around that revenue from these types of machines. Mr. Trail questioned whether the City could just require the bars to remove one or two machines to meet the 10% requirement. Mr. Engstrom replied that this is a possibility for future businesses; however, the licenses have already been issued and any text amendment the City Council adopts or approves would not affect the existing licenses.

Mr. Trail agreed with Mr. Otto in that the City should discourage video gaming. The little bit of short term tax revenue is hardly seems like it would be a great thing to allow. However, if the City does not allow gaming halls, then they will just locate in the Extra Territorial Jurisdiction (ETJ) area.

Mr. Otto felt it would be like any other gambling, the State claimed it would create extra money for schools, but it doesn't. Instead it creates extra money for big corporate interests who then fund the lobbying in Springfield. The State is claiming that allowing video gaming will help keep the VFW halls open, but that is not what is going to happen. Instead there will be a corporation that is very aggressive about marketing and will plunk gaming halls all over town. So, he wondered if through zoning, the City could limit gaming licenses to one per individual or business entity. Mr. Engstrom answered no, it could not be done through zoning and he did not believe that City Council could do it through the licensing ordinance either.

Mr. Hopkins wondered how the Plan Commission would accomplish the idea that video gaming machines could not exist in any zoning district using the proposed definition for gaming halls. Mr. Marx replied that the proposed definition as amended would not accomplish prohibiting gaming halls in any zoning district. The proposed definition simply provides a better identification for gaming halls and restricts them to the B-3, B-4 and B-4E Zoning Districts.

Mr. Hopkins asked if the City could define gaming hall and then not allow the use in any zoning district as a way to prohibit them. Mr. Engstrom stated that he never heard of doing it this way before. He felt it may be safer to require the use to obtain a conditional use permit in all zoning districts, and then it would up to the applicant to prove that they would not be a social harm.

Mr. Buttry asked for clarification in that the Zoning Board of Appeals reviews and decides on conditional use permit requests. Mr. Engstrom replied yes, that is correct.

Mr. Otto questioned whether through zoning they could require that gaming halls must be attended at all times. Terminals really do not require anyone present. Mr. Marx pointed out that a gaming hall has to serve liquor on the premises, and the Illinois State Law requires someone capable to serve the alcohol. So, for principal or accessory use gaming establishments, they would always have staff present.

Mr. Hopkins asked if the City could modify the liquor ordinance so as to not provide liquor licenses to gaming halls as defined in the proposed text amendment. Mr. Engstrom said that this could be possible, but it would be an amendment to the City Code and not a zoning amendment. Mr. Hopkins stated that he is trying to come up with a way to accomplish what some of the Plan Commission members may want to accomplish and that is to prohibit gaming halls in the City of Urbana. So, he suggested that the Plan Commission might forward this case to the City Council with a recommendation against approval with an attachment suggesting that the basis for that action by the Commission is the intent not to enable gaming as a principal use.

Mr. Stohr wondered if the existing gaming hall would become a non-conforming use. Mr. Engstrom explained that because there is currently no definition for gaming halls, the Zoning Administrator goes by the use permissions of the use that is most closely associated with it, and the existing business would be allowed to continue under that use. Mr. Fitch added that if the City does not adopt regulations for gaming halls and the City Council increases the number of liquor licenses, then more businesses such as the existing gaming hall would be allowed.

Mr. Otto wondered if the current code requires a gaming hall as accessory use and not a primary use, then on what basis could the Zoning Administrator give a gaming hall type business a permit if they do not have the infrastructure in place to sell more food and alcohol than gaming. Mr. Marx explained that the Zoning Ordinance does not distinguish between principal and accessory uses for gaming. All of the existing video gaming licenses have been delegated to establishments that have been classified as taverns or restaurants on their Certificates of Occupancy. Hot Spot, which is more of a gaming hall, was granted as a restaurant.

Mr. Otto wondered about Hot Sport misrepresenting the purpose of their business. Mr. Engstrom explained that at the time Hot Spot came to the City, there were no mechanisms to use to determine the business as a gaming hall. City staff knew that the business intended to install video gaming machines, so Hot Spot did not misrepresent themselves. It was a failure of the Zoning Ordinance to have a use to put them under, so the Zoning Administrator had to default to what the closest use was in the Table of Uses.

Mr. Trail stated that the proposed text amendment is because of the Illinois State statute on gaming halls. Does the state statute include the term "gaming hall"? Mr. Marx said no. Mr. Trail wondered if the proposed text amendment was being too specific. He wondered how much of it overlaps with the state statute. Mr. Marx replied that the proposed text amendment is within the definition of what video gaming machines are, how they are allowed to operate, etc. Mr. Trail questioned if the state law changes, then would the zoning ordinance change as well. Mr. Engstrom stated that the proposed definition has a reference to the Illinois State law. Mr. Trail expressed concern about making the proposed text amendment too specific and getting gaming stuff that does not fall within the requirements or that it becomes a malleable use that will actually respond more to changes in the State law than to our intentions by creating the use. Mr. Engstrom responded by saying that the City Attorney follows the state laws and would hopefully be able to warn City staff if the state law changed in a way that would negatively impact the City. He mentioned that the State law was passed in 2009, but gaming halls are just now popping up as a principal use.

Mr. Otto stated that one way of addressing this issue is to simply not reference the Illinois State law in the proposed text amendment. Otherwise, every time the state law changes, our ordinance will change. Mr. Trail commented that they could still reference the state law as of this date and that subsequent changes to the state law will not change the Urbana Zoning Ordinance. Mr. Marx pointed out that the language in the proposed text amendment is not intended to act on the state law as a crutch. It is intended to stand on its own merit.

Mr. Trail asked if someone came out with a non-video gaming machine would it still fall under the use “video gaming machine” that is being created in the proposed text amendment. Mr. Marx replied that the term “video gaming terminal” is an umbrella term to describe the legal machines that allow people to gamble. If someone came up with a different mechanism that would allow people to gamble, then yes it would be covered under the proposed use.

Chair Fitch talked about the intent of the Plan Commission. If the Plan Commission members do not want to permit gaming halls as defined in the proposed text amendment, then attempts to add greater protections in such as increasing the separation distance would be pointless. However, if the intent is to allow gaming halls and put in enough protections so that they feel comfortable recommending passage of the proposed text amendment, then the Plan Commission can talk about that.

Mr. Trail stated that he has different ideas of gaming hall as an accessory use within an established restaurant. They are not separated uses that could clearly be regulated differently. Chair Fitch agreed and felt that this is what City staff is trying to propose in a permissive sense. Mr. Buttry felt that even if the Plan Commission recommends denial, he believed that it would be advantageous for the Plan Commission to discuss some suggestive changes to give City Council an understanding of what the Plan Commission’s thinking is. Chair Fitch stated that part of the Plan Commission’s role is to lay out as full of a record for each case for City Council.

Mr. Stohr stated that if the City Council denies the proposed text amendment, then the City is in the same position that they are now. Gaming halls are coming to town and getting permits. So, by recommending denial, the Plan Commission would not be discouraging these types of establishments. This concerns him. Chair Fitch stated that they could follow Mr. Hopkins idea of recommending denial with a statement that the Plan Commission does not feel that gaming halls should be a permitted use in the City and that the Plan Commission recommends that the City Council change the gaming license ordinance.

Mr. Hopkins asked if the City Council needs a super majority vote to contradict the Plan Commission’s recommendation. Mr. Engstrom researched the Zoning Ordinance and could not find where a super majority vote would be required.

Mr. Hopkins stated that the Plan Commission is in a strategic situation. The City Council would still need to act on the proposed text amendment regardless of the direction of the Plan Commission’s recommendation. If the City Council approves the proposed text amendment without changing the liquor ordinance, then the City ends up with a worse ordinance than if the Commission would work on making improvements to the proposed text amendment. The City Council cannot make any fundamental changes to the proposed text amendment without first

sending it back to the Plan Commission, because there has to be a public hearing on what the City Council votes on.

Mr. Otto referred to Illinois State Law 230-ILCS-40/50 which talks about undue economic concentration and about limiting gaming licenses. The intent of allowing gaming terminals is to provide supplemental revenue; however, the proposed text amendment would allow some entrepreneur to open a string of video gaming halls. That entrepreneur will have money to advertise and market their businesses; whereas the VFW halls won't. He believed that more research and work need to be done to the proposed text amendment. There is plenty of research material available. Mr. Stohr stated that there was a huge billboard advertising the gaming hall that already exists.

Mr. Stohr went on to say that his concern is that City staff anticipates license applications being turned in so they are under the gun; otherwise, there will be more gaming halls without being restricted. Chair Fitch stated that there is nothing that the Plan Commission can do about it, because it is out of their purview. Mr. Trail felt that there was something the Plan Commission should be able to do or at least recommend. He suggested the following recommendations: 1) Delineate primary from accessory use and 2) Increase the separation distance between gaming halls that are a primary use to prevent gaming districts.

Chair Fitch stated that they could create a list of changes that they would like to see in order to recommend approval. Mr. Hopkins stated that they could do it that way or they could imagine the most restrictive zoning ordinance with regards to gaming halls and work back from there. He stated that he is inclined to Option 2. So, the Plan Commission could pick one zoning district and allow gaming halls in that district with approval of a special use permit. Working back from this, then the Plan Commission might allow the use in more than one district as a special use. There is a set of criteria that every special use permit request must meet. The Plan Commission could add additional restrictions or requirements to the criteria for a special use permit. Chair Fitch read through the options for adding conditions to a Special Use Permit from Section VII-4.E of the Urbana Zoning Ordinance. Mr. Engstrom pointed out that the City only has additional standard special use for the firearm store and shooting range use. Normally conditional use permits are the ones that have specific criteria. Some uses have criteria in Article V of the Urbana Zoning Ordinance whether they are special, conditional or allowed by right. This is a catch all place to put criteria for a use.

Mr. Hopkins suggested that the Plan Commission send the proposed text amendment back to City staff to work on. He recommended that they make all three zoning districts (B-3, B-4 and B-4E) require special use permits. He also recommended that they add language to the definition of "gaming hall" stating that it is subject as a special use so that it identifies the criteria and intent of the use. He believed that a revised ordinance with these changes in addition to the record of the Plan Commission's deliberation perhaps highlighted as part of a motion might be a reasonably robust strategy to send to the City Council.

Mr. Trail wondered if they make it a special use, then do they need to enumerate the areas in which a special use would be judged. Mr. Hopkins stated that they can, but he imagined that the definition would be elaborate enough that it gives a lot of information about what the special use

judgments would be. This plus the general special use criteria in Section VII-4 would be sufficient. However, they might need to redefine the distance numbers. He would even be inclined to remove the specific numbers in the language about the separation distance from daycare centers so that they could apply a larger number as a judgment in during a public hearing for a special use request for a gaming hall.

Mr. Otto wondered how Plan Commission members in the future would know that this Commission intended to have a greater separation distance if they remove the specific numbers. Mr. Hopkins explained that they could add specific things to the special use criteria as they did in the firearm store and shooting range ordinance.

Chair Fitch stated that he did not believe that they could do anything about restricting ownership of gaming halls. He found where the Illinois State law requires the owner to be a resident. Mr. Otto stated that he was more interested in the economic concentration. Chair Fitch asked City staff if the Plan Commission could impose a condition related to how many special use permits a single entity could have for this purpose. Mr. Engstrom said that he did not know if this would be allowed but City staff will check with the City's Legal staff.

Mr. Stohr inquired as to how some communities have accomplished banning gaming halls. Mr. Marx replied that some communities accomplished it through quantitative definitions and others through qualitative definitions similar to what City staff described in the proposed definition, but just through a simple process of defining it and stating what they do not want allowed within their confines. Mr. Engstrom stated that City staff can double check this and let the Plan Commission know at the next meeting.

Mr. Buttry asked if there was any danger of gaming licenses being issued while this case is open. Chair Fitch stated that the law is what it is at the current time. The Mayor and the City Council will continue to do what they do. Mr. Otto added that they do have to expand the number of liquor licenses before they could issue any gaming licenses. By doing so, it would be sending a pretty clear signal on the City Council's part that they more aggressively have gaming halls. They are ultimately responsible to the voters.

Mr. Hopkins asked if each liquor license is a substantive decision by the Mayor. If there would be an additional liquor license, the Mayor could decide, even if there is an application for a gaming hall, to give it to another use such as a restaurant or bar. It is the Mayor's discretion who gets the liquor license. Mr. Engstrom said that is correct.

Chair Fitch continued Plan Case No. 2250-T-15 to the next regularly scheduled meeting of the Plan Commission.

6. OLD BUSINESS

There was none.

7. NEW PUBLIC HEARINGS

There were none.

8. NEW BUSINESS

Case No. CCZBA-791-AT-14: A request by the Champaign County Zoning Administrator to amend Section 6.1.3 of the Champaign County Zoning Ordinance regarding “Heliport/Restricted Landing Area”.

Chair Fitch opened this item on the agenda. Christopher Marx, Planner I, presented this case to the Plan Commission. He talked about Case No. CCZBA-AT-13 in which the Champaign County Zoning Board of Appeals adopted an amendment that established standard conditions for special use permits related to heliports and restricted landing areas for aircraft and helicopters in the incorporated of the County. The amendment was temporary for a one-year trial basis. He stated that the proposed text amendment would make those temporary changes permanent with a few minor changes. City staff recommends that the Plan Commission forward a recommendation to City Council to defeat a resolution of protest.

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

Chair Fitch asked if the top of Carle Hospital was considered a heliport. Jeff Engstrom, Interim Planning Manager, stated that that it is not a heliport. It is an accessory to the hospital.

Mr. Trail asked why the language of the resolution is worded the way it is. Mr. Engstrom stated that the City a right to protest text amendments to the Champaign County Zoning Ordinance. Resolutions for these text amendments are worded this way in case the City should want to protest an amendment. In this case, however, City staff is recommending to defeat a resolution of protest because it would not be in the City’s best interest to protest.

Mr. Trail said that they could either protest or defeat a resolution to protest. If they do not oppose the text amendment, then the Plan Commission should recommend that City Council defeat a resolution of protest. Mr. Fitch said that is correct.

Mr. Stohr wondered if there were restrictions regarding the time of day, frequency of the use and noise with regards to drones and unmanned aerial vehicles. Mr. Marx replied that the FAA is just getting around to addressing the issues with drones. The proposed text amendment considers more spatial requirements as opposed to temporal ones.

Mr. Stohr asked if the proposed text amendment only applies to helicopters and no other types of aircraft. Mr. Marx answered that the proposed text amendment defines two types of landing areas for aircrafts. It defines a “heliport” and a “restricted landing area”. A restricted landing area almost always means an airplane.

Mr. Trail inquired about the nature of the original request. Mr. Engstrom could not recall. It did not have anything to do with Frasca.

Mr. Stohr asked if it had to do with the subdivision that was around a landing strip. New owners of a house in the subdivision moved in and protested the use of the landing strip. Mr. Engstrom said it is possible.

Mr. Otto moved that the Plan Commission forward Case No. CCZBA-791-AT-14 to City Council with a recommendation to defeat a resolution of protest. Mr. Hopkins seconded the motion. Roll call on the motion was as follows:

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

The motion passed by a vote of 6-0. Mr. Engstrom mentioned that this case would be forwarded to City Council on March 2, 2015.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

There was none.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

The meeting was adjourned at 8:54 p.m.

Respectfully submitted,

Jeff Engstrom, Secretary
Urbana Plan Commission