

Discussion Item: Re-establishing the Boneyard Creek Commission

Alderman Dennis Roberts and Boneyard Creek Commissioner Clark Bullard request that the Urbana City Council, to direct city staff to begin the process of re-establishing the Boneyard Creek Commission as an advisory body of oversight relating to development and planning in the Boneyard Creek District, as defined in Article XIII - Special Development Provisions; Section XIII-4. (pg. 44-48) of the City of Urbana Zoning Ordinance; and chaired by the Boneyard Creek Commissioner, as defined in Article XI – Administration, Enforcement, Amendments and Fees; Section XI-13. (pg. 172) of the City of Urbana Zoning Ordinance, and to consider appropriate amendments to these Articles to achieve this goal.

History: At a **Special Meeting of the Urbana City Council** on Monday, August 31, 2015, a walk-through of properties adjacent to the Boneyard Creek was conducted, during which soil erosion, sink holes, and damage to properties due to soil subsidence were observed.

At the **September 21, 2015 meeting of the Urbana City Council**, a 44 minute discussion was held on the desire to bring greater transparency and public input to improve the process of issuing Creekway Permits. The current process is conducted at the staff level, where significant zoning decisions are made without general knowledge, public input, appropriate posting, or access. A letter of concern sent to Mayor Prussing as to how the committee functioned was also read.

[Video Archive] :

https://www2.city.urbana.il.us/Scripts/CouncilVideo/Video.asp?v=/_Video/City_Council/2015/20150921/14_Discussion_Boneyard_Creek.flv

Discussion during the meeting showed four Council members spoke in support of the proposal to create a full Commission under the Commissioner, to “tweak” the city ordinance to adjust the role of the staff in its job of assisting the Boneyard Creek Commissioner, and to add greater transparency and public participation to the process.

The Proposed Commission would be tasked to work to create a plan for the segment of the Boneyard Creek not addressed in the 2008 Plan update, to build partnerships in the community, and to seek funding for future planning and development of a multi-use pathway along the Creek, as specified in the latest Mayor and City Council Goals document (2015-17). Alderman Roberts offered to put time and attention in preparing a draft document. This offer was supported by three council members; Mayor Prussing agreed that staff could put this on their project list and return to Council with results in a reasonable time frame.

To minimize staff time needed to achieving this goal, Alderman Roberts and Commissioner Bullard have prepared a rough draft ordinance to re-establish of the Boneyard Creek Commission, and to specify its role in helping to complete the Boneyard Creek green space and pathway. This rough draft will be provided for staff’s review and improvement, and revision as required, and to be brought back for final approval by the Urbana City Council.

The Commission should be low impact on staff. Much of its work would be done by Committee members and outside partners. The Commission could meet quarterly, or as needed to complete its business.

[Transcription of September 21, 2015 Council meeting attached].

History of Council Activity Regarding Boneyard Creek Properties/ Boneyard Creek Commission

(From City Council Minutes and Council Meeting Video Archive)

Special Meeting - Monday, August 31, 2015, 5:30 p.m

Mayor and Council Walk-through Tour of Boneyard Creek (400 block of W. Springfield/ W. Main St., from the "Y" intersection west to McCullough St.) with property owner Darrel Foste, and Community Development and Public Works staff.

1. Tour of Section of Boneyard Creek from Strawberry Fields Food Market to Lincoln Avenue

2. Discussion - Topics:

- a. Easement to create a future path along the creek;
- b. How to avoid cracks and settling of foundations which have created structural problems in past decades due to underground water flow.

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MINUTES form Special Meeting

1. Tour of Section of Boneyard Creek from Strawberry Fields Food Market to Lincoln Avenue.

Everyone present walked down Main Street toward Patterson Park while Alderman Roberts and Mr. Foste pointed out the current structure and conditions along the creek.

2. Discussion Topics:

- a. Easement to create a future path along the creek;
Assistant City Engineer Brad Bennett and Building Safety Manager John Schneider were present to address council's questions and concerns regarding inspection of the creek and building permits. Discussion ensued.

Alderman Roberts and Mr. Foste presented their vision to everyone present.

- b. How to avoid cracks and settling of foundations which have created structural problems in past decades due to underground water flow.

Reach to current owners and propose renegotiating an easement for renovation along the creek on both sides. This will allow an opportunity to beautify Urbana and to make a good use of the creek. Discussion ensued.

Sept. 14 2015 - Committee of the Whole [meeting minutes]

4. PUBLIC INPUT

3. Alderman Roberts read a memo regarding the recent tour of the Boneyard Creek taken by the Mayor and the Urbana City Council, and discussed expanding the mission of the Boneyard Creek Commission and the Boneyard Creek Commissioner.

Alderman Roberts asked that this item be a discussion item to appear on next week's Urbana City Council Agenda.

3. Sept. 21 2015 - Committee of the Whole [meeting minutes]

[Video] :

https://www2.city.urbana.il.us/Scripts/CouncilVideo/Video.asp?v=/_Video/City_Council/2015/20150921/14_Discussion_Boneyard_Creek.flv

I. NEW BUSINESS

4. Discussion (pg 6-7) (video -- 45 min.)

a. Boneyard Creek

Community Development Director Elizabeth Tyler addressed the council with information regarding the Zoning process and regulations. Ms. Tyler provided some clarification to some questions and concerns addressed by council about the

Boneyard Creek and provided a copy of current zoning procedure. Discussion ensued. Alderman Roberts would like to see a more transparent process when issuing building permits and more public participation at an early stage of any development projects. Discussion ensued.

Alderman Smyth and Alderman Roberts will start a frame work of modifications to the current procedures towards creating a Boneyard Creek Commission, discuss with staff, and bring this back to council.

Summary / Video Transcription of Discussion — September 21, 2015:

LIBBY TYLER:

Explains Boneyard Creek Overlay District : The remapped flood plane and any properties adjacent to it.

Two Plans govern area:

- Original 1978 Boneyard Creek plan
- Boneyard Creek Improvement Plan (2008)

Boneyard Creek Commission – created to come up with revised plan

We do not have a Boneyard Creek Commission, but we have a Commissioner. Role to advise city and staff regarding Boneyard Creek and to advise staff as administer permits along the Creek.

Section G of Zoning Ordinance: to encourage good things to happen in Boneyard, to help make it easier for people owning property to get some benefits for being there, to allow them to develop in way that is safe and avoid more flooding.

- Zoning Administrator in many cases can issue the permit. Application fee: \$150.
- Confers with developer as staff. A staff process. As long as modifications are appropriate, meets criteria, can send to Plan Commission a notice to issue a Building Permit.
- 10 day window to object, bring to Plan Commission if there is an appeal to notice.
- Plan Commission does issue the final permit. Tends to be minor things in the Boneyard.
- Request for a Major variance will be seen by Plan Commission.
- As system works now, it is complicated . . as it is presented now.

“Why do things done Administratively? It speeds the process.

“Text Amendments to Zoning ordinances must go to Planning Commission. Affects property rights. May take up as a review and study, so that it meets the broad goals that the Council may lay out.”

DENNIS ROBERTS:

"I have little that I find as a problem to pursue the steps in the District to achieve appropriate Zoning Decisions as defined in the Ordinance of the Boneyard Creek.

- My issue is in the issue of transparency in the process.
- Recent walk through of the Creek, looked at seeing the Creek, supporting its development.
- Rights of property owners to exercise their legal right to erect development along the Creek.
- No issue with people pursuing their property rights in a clear, open, understood manner so that not only the Administrators have chance to review it, but the entire community benefits by understanding how the nature, the environment and development along the Creek is changing in the community. It is distressing to see the erection of first story of a building that you had no clue was to be erected.

“Three Points concerning decisions and the process and understanding how we appreciate and support the Creek area. .

1. Need for Greater Transparency – and for public participation in those meetings that are conducted in conference rooms behind closed doors, that are not noticed to the public, or members of City Council, where preliminary drawings, blueprints, and ground plans are discussed in careful detail are reviewed by Administrative Board, where there is no attempt to notify other individual property owners within 500 yards of the proposed development, City Council members themselves, or the general public.

There is no opportunity for public input, no public notice, meetings do not appear on city website. Yet very significant preliminary decisions are being made on development along the creek bed.

Is it not better to have some transparency at an early stage, instead of at the final stage, for the public to be aware. . . To receive some discussion before the Board or Commission.

1st Complaint: Lack of Transparency – at a very basic level as development approvals are being made, as environmental issues along the flood plane are being discussed, and where Bonus Points are awarded or other basic decisions are being made. Not talking about Creekway Permits, which is governed by the Floodplane Zoning Ordinance.

2nd: Public Needs to Be More Involved in the awarding and understanding of what is being offered in Bonus Point and other variances. During the Administrative Review Board Process, these various benefits are being awarded to developer without public input or review, and Creekway permits are offered regarding:

- Site plan of building
- Building height
- Side yard, front yard, or back yard set-back variances
- Changes in the parking requirements of the development.

We know it is not possible to build within the flood plane. In a sense the Creek is protected already.

If your property just touches the flood plane, the decisions of the permit will affect you.

If you allow a building to be taller than any other building next to it, or extend much farther into the side yard, you are going to be affecting the building next to you, whoever owns it, in a way that they may not even be present to complain about or state an opinion about, because they are not even invited to the meeting. The only people invited to the meeting are the developer, his architect or his lawyer, and city staff.

There is no process to know when these meetings take place.

3rd. Why Not Reinstate the Boneyard Creek Commission? — We would have all the same process going on, but we would have the addition for the opportunity for public input because it would be a Commission meeting. There would be an agenda, would be pre-noticed in the paper or by usual ways, would have 2-3 individuals of the public involved in the discussion at an early stage who are qualified because they would be appointed by the mayor.

We already have a Boneyard Creek Commissioner, but he has no Commission to lead. He himself can only advise, and although the advice of the Commissioner and the Public Works Director are asked for, it is not a vote that would actually change the direction of the decision of the Zoning Administrator.

“I feel we are all working for the best possible good for the result at the Creek, but why do we keep this [process] in a closet? Why not open it up to public review and participation that is offered by all the other decision-making bodies that city uses [such as]:

—The Traffic Commission oversees traffic control, parking, street signage, street signal choices, and a member of City Council sits on the Commission. These are not earth shaking decisions, but they affect people and neighborhoods. That is considered important enough for public participation. People do come to the Commission to discuss even a single stop sign.

—The Tree Commission —The most probably most invisible Commission in the City. Oversees the maintenance of the city’s tree canopy. Guided by the City Arborist and professionals. Any person can walk into their meetings, and the meetings *are posted*.

—The Historic Preservation Commission — Oversees historic properties in town, suggests Landmark designations, and advocates for historic preservation. It is an advocate for historic preservation.

“Why don’t we have a group or Commission as an entity to advocate for the future use and development and best protection of the Boneyard Creek bed. Have a few people who want to participate and are appointed by the mayor, who have the standing to take the appointment, to participate in the decision making along the way. Give the Commission the role of review of proposals, making comments on documents, advocate for the Creek as a City amenity, a green space, talk about the extension of the multi-use paths which were envisioned in the 1978 Boneyard Creek Master plan and the Boneyard Creek update, 2008, which we are working on now.

“Allow the Commission to create a linear park along the Creek (one of the City Council Goals). Allow the Commission to work in a creative way, to build partnerships, to seek out state, federal or local funding and explore sources of funding to advance the vision of the Creek bed as an amenity to the city. This would be useful to staff, because staff may not have the time to look for funding, but the Commission could look for funding, just like the Sustainability Commission looks for grants and even wins awards for its work.

“I just want to have a conversation about transparency, about public participation before variances are allowed or admitted, and to consider creating a Creek Commission that looks like a Commission, and works like a Commission, . . . and thought like a Commission, and assists the City like a Commission would.

“We are seeing the demolition of 5 or 6 buildings in a consolidated area, and while we cannot control the buildings allowed there, but we can make choices if they can exceed certain limits or meet certain limits that the City has allowed.

“It is important to talk about, I don’t see that there is any problem to talk about, or that it conrtamands the authority of Libby Tyler as the Zoning Administrator, or any thing else. Only if a City Council member or elected official disagrees with the decisions made about the Creek and its development, ground plans, the placement of parking, or the allowances for higher or wider footprints that come about, these things are fiat accompli. How many of us track these decisions that come out of Boneyard Creek administrative meetings, which are just staff meetings? It is never mentioned at the City Council meetings. Attention is never brought to it outwardly. It occurs under the radar.

“As the City Council we should bring as much to light as we can. I do not think our proposal to establish a real, working Commission hurts, but helps.

Reads Message from the Boneyard Creek Commissioner to Mayor Prussing: (July 6, 2016):

“As the Boneyard Creek Commissioner, I have found it very frustrating to make totally reactive, piece-meal decisions about the ways to preserve the 1978 Boneyard Creek Master Plan’s vision of a pedestrian walkway connecting downtown and campus. Basically I have been forced to approve deviations from zoning requirements in order to use the bonus points mechanism to prevent encroachments on the stream bank that would permanently foreclose the option of building the path in the future.” —Clark Bullard

“Even the Creekway Commissioner has reservation on the process.”

ERIC JAKOBSSON:

“A couple of points I totally agree with. I would support the resolution to create a Boneyard Creek Commission. The area is special, a special feature. I also support the charge to the Commission of planning for a public walkway along the water. I don’t think there is any city that has maintained public space on a waterfront that has ever regretted it. Clearly something must be done to the area, the reality is so far short of the potential. . . It really does warrant a standing Commission that meets regularly to begin to implement the master plan. I believe also that need a thorough exploration in some way of the hydrological features that are peculiar to the area at both sides of the Creek that is downtown out to the Phillips Center [settling structures]. We need a different building code there. . . . I would strongly support the establishment of a Commission to deal comprehensively with this particular area and to engage proactively in how this area should be developed.”

CHARLIE SMYTH:

“I am supporting Dennis in this...I feel a level of frustration of how to make the Boneyard Creek into something. How to get to the ’78 much less to the 2008 plan. The structure we have now is sort of piecemeal. We need to find a happy balance between this section 13.4 and a Commission that can shed some public light on these decisions made today behind closed doors. . . to speed up and give us a clear way—maybe it’s 30 or 40 years —to get to a linear park. Add some level of transparency to the important decisions, and develop a road map that is not piece meal but that actually has a purpose and a goal that will drive us to get something that may not occur in the life time of some of us, but has great potential.

“We had a recent case about 3-4-5 years ago where we tweaked some of the Zoning Administrator’s powers because too much was being done administratively, not enough was done openly, and some conflicts developed. It is important that we periodically fine tune things like this, so I look forward to ongoing discussion.”

ERIC JAKOBSSON:

“I just want clarify one thing, I am not in any way critical of the existing the Boneyard Board. . . . I just think we need to create a framework that creates a process that creates that transparency.”

DENNIS ROBERTS:

"Yes, exactly. In observing the activities and discussion of the Boneyard Creek Administrative Body, I found great discussion takes place, thoughtful comments are appreciated and absorbed. . . ultimately it is a mix of exchange that makes the better solution. I just want to open it up a little bit more so that the community can watch that process. That there is a place for citizen input. . . We are always learning from our Citizens.

[Holds up: *Ordinance that amendment passed Planning Case 1544-T-94 of 1933, that created the position of the Boneyard Creek Commissioner.*]

DIANE MARLIN:

"I generally support the intent behind these discussion topics. . . . I realized as I learned more about it that major buildings, major developments can be built in the this Creekway district without the same sort of oversight or process that other projects anywhere else in the city would have to go through. These bonus provisions are major variances, and so I have never understood why a building in this district should be exempt from the same level of public participation and review as any other project in the City. I do not think we are asking for any more or anything different, I feel every development should be treated the same. . . I think this is worth the discussion."

LIBBY TYLER:

"I think it is good to have these discussions in terms of goals that can be achieved in a Council -directed text amendment, but the specifics of it to deal with property rights, we need to be have that in the hearing context of the Planning Commission, who holds hearings on the text amendments, will notice people . . . we have a couple hundred properties that are affected by any changes in the procedures. . . .We do have other mechanisms, we have tiered processing . . . HPC reviews most things, but there is a category called Minor Works. . . .the MOR also has an administrated tier that might be used in the Boneyard. . . . There are planning goals here as well as development goals.

"I think we can achieve both, but it wouldn't be proper to do that all on the Council floor, there is work to be done at the staff level, to prepare this, to get guidance, and the Planning Commission has their roll with the public input, and of course any changes would come to the City Council."

MAYOR PRUSSING:

"This is the only place where Bonus Points are awarded?"

LIBBY TYLER:

". . . Text "Establishing a new Commission that's a little bigger deal, because there's staff resources that go into that. Community Development does it, twelve right now. . . I would completely agree on the need for refreshed planning work on the Boneyard because we are working with such an older plan, I think that would benefit. . . . There are definitely great people out there who can assist. . . If we go down the path to re-establish a Boneyard Creek Commission it should be people who have an interest in technical expertise, because again we have that process: staff plays a role, Commissions play a role, Council plays a role."

ERIC:

"We are relatively early in this discussion. . . I think, based on this discussion, I would favor, I think, the establishment of a Commission because it is so unique: it's got unique building challenges, unique features, and I think a Commission that was free standing on this could take a pro-active roll in creating, in updating and flushing in the Master Plan."

MAYOR PRUSSING:

"Ok, so we could . . . you know staff has a lot of stuff to do. . . but put it on the list and bring it back a proposal—some type of reasonable time frame. I'll check with Libby what she finds to be reasonable to get it done."

DENNIS ROBERTS:

"I would certainly be willing to . . . thoughtfully put together a couple of basic proposals or start some writing up as well. It wouldn't have to be completely on the burden of the staff to handle it. I don't want to take away any of the responsibilities of the Planning Commission. Maybe if the Boneyard Creek Commission was adopted by the Planning Commission would be another way to consider it. What I want to see a more proactive, creative way of dealing with the question of developing the Creek bed, and also public transparency is so important."

CHARLIE SMYTH:

"I am looking for a way to revise this [holding original 1932 Zoning Ordinance]. It is a starting point, the existing Zoning Ordinance is where you would start. Then figure out, based on what Dennis and I have put together, and what others have said tonight, and the framework that Eric refers to is a nice way to think about it, how to we make that framework out of these various documents and comments. I don't know that it will be terribly difficult, but it is also complicated. It's already complicated."

ERIC JAKOBSSON:

"To the extent we that can do it consistently with the open meetings act, I am willing to help you two guys."

DENNIS ROBERTS:

"Thank you all for the time you spent listening to my thoughts."

(End of Discussion) - - - -