

**MINUTES
CITY OF ST. CHARLES, IL
PLAN COMMISSION
TUESDAY, AUGUST 5, 2014**

Members Present: Chairman Todd Wallace (7:12pm)
Vice Chair Tim Kessler
Sue Amatangelo
Brian Doyle
James Holderfield
Laura Macklin-Purdy
Tom Pretz
Tom Schuetz

Members Absent: Steve Gaugel

Also Present: Russell Colby-Planning Division Manager
Rita Tungare-Director of Community & Economic Development
Ellen Johnson-Planner

1. Call to order

The meeting was called to order at 7:04 p.m. by Vice Chair Kessler.

2. Roll Call

Vice Chair Kessler called the roll. A quorum was present.

3. Presentation of minutes of the July 22, 2014 meeting.

A motion was made, seconded and unanimously passed by voice vote to accept the minutes of the July 22, 2014 meeting.

4. Plan Commission Training

Mr. Colby began the second session of Plan Commission training. He followed the PowerPoint slides provided to the Commissioners. Commissioners were free to ask questions and discuss items throughout the presentation. [Only questions, answers, and discussion have been described in the minutes.]

Mr. Colby presented a map that shows the City's current corporate boundaries and current boundary line agreements, as a follow-up to the boundary line agreement discussion at the last meeting.

Mr. Schuetz asked if the boundary lines move much. Mr. Colby said that most have been in place for ten years or more and have not moved very much since they were established.

Vice Chair Kessler asked for confirmation that the only boundary lines that could move are those that are not contiguous with the City's boundaries. Mr. Colby confirmed.

Vice Chair Kessler noted there is no boundary line agreement to the west. Mr. Colby said the City does not currently have a boundary line agreement with the Village of Campton Hills. The idea was brought up in response to the concept plan for The Bluffs, but nothing has been formally proposed.

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Mr. Schuetz asked if the lack of formal agreement is because St. Charles hasn't approached Campton Hills, or vice versa. Mr. Colby said for the most part, the City does not see growth occurring to the west. Much of the land to the west has been developed as unincorporated subdivisions, so defining the line has not been a pressing issue.

Mr. Pretz noted that since Campton Hills is a relatively new entity, it will take them some time to push the boundary line as important for their planning.

Mr. Doyle asked about the unincorporated islands on the map, particularly the strip near the western boundary. Mr. Colby explained that is land owned by Nicor gas for their gas line and is not incorporated. Mr. Doyle also asked about the island near the Kane County Fairgrounds. Mr. Colby said the Kane County Farm Bureau property is still unincorporated.

Mr. Schuetz said in the past year the Commission has reviewed many General Amendments. He said he did not understand that all they were considering was text and that the zoning itself did not change. Mr. Colby said that a General Amendment is usually a change to a requirement that applies either across zoning districts or to a certain type of land use.

Mr. Doyle stated the rezoning of Craig Bobowiec's property to CBD-1 is an example of a Map Amendment. He said the Commission needs to have a certain amount of consistency as to how they adjudicates map amendments, since property owners that want to change their zoning are entitled to equal consideration. Mr. Colby noted that findings need to be made for a Map Amendment. While there is some precedent set if adjacent property has been zoned differently, the Commission does not necessarily have to reach the same conclusion, provided it can substantiate that the findings for both situations are different.

Vice Chair Kessler noted that for some applications, all findings must found in the affirmative while that is not required for other applications. For a Map Amendment, all findings do not have to be found in the affirmative and some findings do not apply.

Mr. Pretz asked about the City rezoning many properties at once based on lot size. Mr. Colby said the City generally does not petition to change the zoning of a property without the owner's authorization. One exception was in 2006 when the City adopted the new Zoning Ordinance. At that time, the zoning of all property in town was changed and notice was not required to be sent to individual property owners.

Mr. Pretz asked about the John Collins property and whether a public hearing was held. Mr. Colby said that proposal was primarily a subdivision, but a zoning change was required for a portion of the property. A public hearing was held for the change of zoning.

Mr. Schuetz said it would be helpful to be reminded of the definition of certain terms and other hints. Mr. Colby said the information is typically in the staff report. They have been considering creating a reference handout for each type of application that would specify the type of information that is considered, the findings, and what kind of conclusion the Commission needs to reach with the findings. Mr. Schuetz said that would be helpful.

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Vice Chair Kessler asked if the Zoning Ordinance sets out what can be considered for a variance as well as what cannot be considered. Mr. Colby said only what can be considered is listed and anything not on the list cannot be considered.

Mr. Doyle said that often when an application comes to the Commission, the subtext to the Commission's conversation is the notion that there is some sort of hardship. He asked how these implied hardships differ from the hardship standards for a variance. Mr. Colby explained that although applicants often present that they have a hardship, the criteria the Commission should be considering are the standards that go along with the specific application. For a PUD request, the Commission is to review whether the request meets the purposes of the PUD process as stated in the ordinance, because that is one of the criteria that is to be considered with a PUD. From an applicant's perspective, they may face a hardship for meeting the code requirements, but that is because they want to make an investment in the property, not because they cannot make reasonable use of the property as it exists.

Mr. Doyle stated he interprets that a creative approach is needed in the case of PUDs because there is some practical obstacle preventing a more conventional approach from meeting the City's interests. He said it seems like there is an unstated assumption that the reasons why the Commission looks at providing a creative approach is because we feel that there is some hardship. He stated he would like to have a more rigorous understanding of the PUD criteria for future applications so the Commission does not unwittingly allow the PUD application to be a workaround from the Zoning Board of Appeals restrictions on variances. Mr. Colby said if someone requests a variance and it meets the standards, the variance is granted. With a PUD there is some level negotiation; for whatever the developer is getting, the City is getting some benefit, as well.

Vice Chair Kessler brought up the General Amendment application regarding the definition of ½ story as an example of Mr. Colby's statement that an applicant petitioning for a General Amendment might reference their own situation, but that the implications of the General Amendment would be to all zoning districts. Mr. Colby said that is a good example and the impact of that change would be to all residential zoning districts. Mr. Colby explained when staff is approached by property owners about issues in the zoning ordinance, staff checks to see if the issue exists on other properties. If the issue only applies to a specific property, that is generally not a good reason to amend the code.

Vice Chair Kessler brought up chicken regulations. Mr. Colby said that issue is similar to the video gambling issue. Although agriculture is regulated in the Zoning Ordinance, limitations on raising certain types of birds are stated in a different section of the City Code.

Vice Chair Kessler asked if most General Amendments are proposed by the City and if any recently were not. Mr. Colby said many are proposed by staff. Recently, there was an application to change the sign requirements in the CBD-2 District. In that situation, the change would not impact many properties, but there were also not many properties in the City that were subject to the same conditions as the petitioner's property, which was a commercially zoned lot with no frontage and no ability to have a sign located near passing traffic. The owner filed the application because it was a concern for his property. Mr. Kessler said the Commission could have denied the application because it was specific to one property. Mr. Colby explained the argument was that the amendment was in the public interest, in case there was a property that had the same issue. The conclusion was that the Zoning Ordinance should provide for some type of signage.

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Mr. Kessler asked if the findings for a General Amendment must all be found in the affirmative. Mr. Colby explained that findings for General Amendments are only informational because state statute does not require the Commission make a conclusion on any of the findings. The Zoning Ordinance simply states that this is information the Commission should consider.

Mr. Doyle asked whether the Commission can make a recommendation that does not take the findings into account. Mr. Colby said it could, but it would be advisable to at least consider how the proposal fits within the context of the findings, in case the City is challenged on the decision.

Mr. Doyle asked if the ordinance also requires the Planning & Development Committee and City Council to consider the findings before it legislates. Mr. Colby said for the other applications it does, but for a General Amendment, the findings do not have to be stated as part of the ordinance approving the amendment. Mr. Doyle asked whether the ordinance also implies that the Planning & Development Committee and City Council should consider certain findings when it makes a resolution. Ms. Tungare said the ordinance is not very explicit for General Amendments. Mr. Colby explained that the information the Plan Commission includes in a resolution related to its findings is forwarded to the Planning & Development Committee, but the ordinance does not require the Committee to affirm the findings through legislative action; this is different from the other types of applications.

Mr. Schuetz suggested specifying what zoning districts mean on the reference sheets for Commissioners. Mr. Colby said that information is generally provided in the purpose statements in the Zoning Ordinance and relevant information is included in the staff materials. Ms. Tungare encouraged Commissioners to refer to the applicable purpose statements in the Zoning Ordinance when considering Map Amendments. A cheat sheet of the purpose statements can be provided to the Commission.

Vice Chair Kessler asked where the LaSalle Factors can be found and how they are applied to Map Amendments. Mr. Colby said they are the same type of findings of fact as other applications and the findings are submitted as part of the application.

Vice Chair Kessler stated the Commission should spend more time on findings of fact. The Commission does not consider them verbally. Mr. Colby said the findings of fact are submitted by the applicant and are part of the public hearing record. Much of what the Commission discusses when considering a Map Amendment falls under the findings, although the discussion has not been structured around the findings.

Mr. Schuetz asked if, in layman's terms, the findings address how the proposal is going to affect surrounding parcels. Mr. Colby said the findings consider the impact of surrounding properties as well as comprehensive plan designation and physical conditions of the site.

Mr. Schuetz asked whether it would be appropriate to specify the number of findings of fact that apply to what is being considered. Vice Chair Kessler said there could be more structure to the conversation in that Commissioners have the findings of fact in front of them and know which findings are being referred to during the discussion. He said it is assumed that the Commission is discussing the findings of fact because we have the findings provided by the applicant. The Commission seldom states disagreement with a finding.

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Mr. Pretz said there should be some structure, but if the discussion is too structured, there could be a massive amount of time spent on one item. Vice Chair Kessler suggested specifying when aspects of a discussion fall under a certain finding of fact. He said that this becomes more important when the Commission makes a negative recommendation.

Ms. Tungare said when the Commission makes a recommendation with conditions attached, it is also a good idea to reference the findings of fact on the basis of which conditions are being made.

Mr. Doyle asked whether it is understood that the findings of fact that follow a resolution are the Commission's findings when they make a recommendation to City Council. Mr. Colby confirmed.

Mr. Doyle suggested the Commission be more deliberate in consciously accepting, modifying, or denying certain draft findings of fact from the applicant. Developers will present findings of fact that are in their favor. The Commission should be deliberate in reviewing those findings and addressing whether we agree with them. Any Commissioner should be free to bring up issues with the findings. Mr. Kessler agreed and said that some kind of guideline would be helpful for cohesion and that the Commission should be more deliberate with the findings.

Vice Chair Kessler asked for clarification regarding City Council and the findings of fact for a Special Use. Mr. Colby explained Council is not required under state statute to make findings for a denial; they can simply deny the application by saying it did not meet the findings. In practice, it would be advisable for Council to include the reasons why the Special Use is being denied, but that is not technically required by statute. Ms. Tungare said recent case law has been unclear. For Special Uses, it is better to be safe than sorry. Council is encouraged to be conservative and make findings either way, whether the Special Use is approved or denied.

Ms. Amatangelo said even when the Commission is conservative and denies a Special Use, Council can still approve it. Vice Chair Kessler said Council would have to find all the findings in the affirmative. Mr. Colby said Council would have to adopt its own findings and find each in the affirmative in order to approve the Special Use.

Vice Chair Kessler said the Commission should take more ownership of their findings of fact.

Mr. Doyle suggested the dog kennel application is an example of a Special Use. Vice Chair Kessler asked whether the Commission placed conditions on the approval. Mr. Colby said the Commission reviewed a General Amendment at the same time. The General Amendment set certain use standards that would apply to that type of kennel use. In that case, the condition was part of the amendment to the code.

Mr. Doyle brought up public welfare and whether the LaSalle Factors provide criteria for how the findings should be interpreted. Mr. Colby said the LaSalle Factors only apply to Map Amendments. For Special Uses, the findings are from the state statute. There is no clear explanation as to what information is appropriate to consider under each finding.

Ms. Tungare said findings are subjective. Based on case law, the burden of proof is on the municipality to demonstrate why it would deny a Special Use. The Commission needs to substantiate its recommendations.

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Ms. Tungare suggested thinking of zoning and PUDs in layers. The zoning district is one layer, and the PUD is superimposed over the zoning. The PUD also supersedes the requirements of the underlying zoning district, if there are certain exceptions or variations that have been granted under the PUD.

Mr. Kessler asked if a property owner can use a property in a PUD as permitted in the underlying zoning district. Ms. Tungare said yes, since that is the lesser standard. Mr. Colby added that the PUD ordinance would specify requirements. If it does not make any reference to a requirement, the requirements of the underlying zoning district are followed.

Mr. Doyle asked if there is a PUD that allows for more intensive land uses, combined with a form-based code that specifies architectural details, streetscaping, etc., whether someone can develop according to the underlying zoning without the intensification or the form-based code. Mr. Colby said the PUD ordinance would most likely say that development must conform to the PUD standards.

Mr. Doyle asked that if the PUD ordinance increases the requirements in terms of, for example, external materials, whether someone can develop according to the underlying zoning. Ms. Tungare said they cannot. That is why if the City wants a certain quality of development, requirements need to be clearly specified in the PUD ordinance.

The Commission decided to stop at the training for the evening on the slide entitled, “PUDs from the PC Perspective.”

5. Meeting Announcements

Chairman Wallace noted that upcoming meetings for both the Plan Commission and Planning & Development Committee are included on the agenda. He said a concerted effort is being made to be active as a Plan Commission in the entire process, from pre-application meetings through City Council approval. When the Commission makes a recommendation to Planning & Development Committee, either Chairman Wallace or Vice Chair Kessler will be present at the Committee meeting to answer questions regarding the Plan Commission recommendation, and will then report back to the Commission.

- a. Plan Commission
 - Tuesday, August 19, 2014 at 7:00pm Council Chambers
 - Tuesday, September 2, 2014 at 7:00pm Century Station
 - Thursday, September 16, 2014 at 7:00pm Council Chambers
- b. Planning & Development Committee
 - Monday, August 11, 2014 at 7:00pm Council Chambers
 - Monday, September 8, 2014 at 7:00pm Council Chambers

6. Additional Business from Plan Commission Members, Staff, or Citizens.

- Plan Commission training scheduled for the August 19 meeting.

7. Adjournment at 8:32 p.m.