

MINUTES OF A REGULAR MEETING

URBANA ZONING BOARD OF APPEALS

APPROVED

DATE: November 15, 2023

TIME: 7:00 P.M.

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

MEMBERS ATTENDING: Joanne Chester, Ashlee McLaughlin, Adam Rusch, Nancy Uchtmann, Charles Warmbrunn

MEMBERS EXCUSED: Matt Cho, Harvey Welch

STAFF PRESENT: Kimberly Smith, Director of Community Development Services; Kevin Garcia, Principal Planner and Zoning Administrator; Nick Olsen, Planner I; David Wesner, City Attorney; UPTV Camera Operator

PUBLIC PRESENT: Mehedi Bakht; Geoff Bant; Nancy Barenberg; Joanne Budde; Sr Karen Carlson; Holly Clemens; Bryce Davis; Rose Daward; Kyle Emkes; Jess Firmand; Barbara Franzen; Grace Giorgio Harshbarger; Jeff Harshbarger; Deb Hissong; Rich Hissong; Mary Johnson; Adam Martinsek; Lorelei Martinsek; Mark Panno; Alyx Parker; R. Janice Sherbert; Wes Taylor; Vicki Trimble; Cindy Tsai; Jim Tucker; Marla Tucker; Eddie Tsai; Fred Wakefeldo; Rene Wakefeldo; Peter Yau; Rittchell Yau; Venkatesh Yekkirala

A. CALL TO ORDER and ROLL CALL

Charles Warmbrunn called the meeting to order at 7:00 p.m. Roll call was taken, and he declared a quorum of the members present.

In the absence of Chair Welch, Mr. Rusch nominated Charles Warmbrunn to serve as Acting Chair. Ms. Uchtmann seconded the motion. The motion passed by unanimous voice vote.

B. CHANGES TO THE AGENDA

There were none.

C. APPROVAL OF MINUTES of PREVIOUS MEETING

The minutes of the October 18, 2023 regular meeting were presented for approval. Ms. Uchtmann moved that the Zoning Board of Appeals approve the minutes as written. Ms. McLaughlin seconded the motion. The minutes were approved by unanimous voice vote.

D. WRITTEN COMMUNICATIONS

Memorandum from City Attorney David B. Wesner Re: ZBA-2023-C-05, Conditional Use Permit – 205 North High Cross Road

Acting Chair Warmbrunn opened this item on the agenda.

David Wesner, City Attorney, presented the background for and reviewed his written memorandum. He talked about Robert's Rules of Order being used to facilitate meetings, but not necessarily being aimed at administrative hearings. He stated his understanding of applying Robert's Rules of Order to the previous meeting on October 18, 2023 regarding Case No. ZBA-2023-C-05 -- since there were no findings of fact stated for the denial of the case, the case should be continued to the point where it was left off before the vote to allow the Zoning Board of Appeals members to declare findings-of-fact. He added that no new evidence or testimony should be received by the board, as that, in his opinion, would be considered ex parte communications.

Mr. Wesner stated that he did not believe it is a good mechanism to reconsider the vote for the case. He mentioned that the Beringer Home Owners Association (HOA) have hired an attorney who has a very different opinion of what the Zoning Ordinance does and does not require. They have an opinion about what occurred at the public hearing on October 18, 2023 and whether or not it was sufficient.

Mr. Wesner recommended that the Zoning Board of Appeals schedule a special meeting to allow the attorneys of the parties involved (himself for the City, the HOA's attorney, and the applicant's attorney) to make their arguments over the result or the effect of what the October meeting was in relation to the ultimate decision. Does the decision stand? Or is it still suggestive of the Zoning Ordinance that leads to a next step by the Zoning Board of Appeals? He stated that it is up to the Zoning Board of Appeals to determine how to proceed.

Ms. Chester stated that it makes her uncomfortable to hear the attorneys declare their interpretations of the legal ramifications of the October 18th meetings proceedings, and then the Zoning Board of Appeals having to make a decision about it. This is not what the Zoning Board of Appeals generally does. Mr. Wesner stated that the Board is subject to the Zoning Ordinance language, and there are opposing opinions of what that language means.

Mr. Rusch stated his opinion as a board member is that the Zoning Board did not finish their job at the previous meeting, and so logically they have unfinished business to address at this meeting. He moved that Case No. ZBA-2023-C-05 be denied for reasons that there is not sufficient justification that the proposed use will be conducive to the public convenience and that the application does not prove that the proposed use would not be unnecessarily detrimental to the district in which it shall be located. Ms. Chester seconded the motion.

Mr. Rusch explained his reason for the motion by stating that he believes the Board has unfinished business from the previous meeting, so his motion is to finish that unfinished business. The Board had a vote, which did not have justification to approve the case or to deny the case. There was discussion on how to proceed.

Acting Chair Warmbrunn felt that to proceed he believed that he and Ms. Uchtmann needed to justify that they have read the minutes and watched the video of the previous meeting. Mr. Wesner agreed and added that they should have read all of the written material that was provided relative to

this case as well as indicate that they have a sufficient basis to entertain the discussion and ultimate decision.

Mr. Warmbrunn declared that he reviewed the record including the video of the October 18th hearing as a basis for participation in this discussion and vote. Ms. Uchtmann stated that she read the minutes; however, she had difficulty hearing the video on her computer.

Ms. Uchtmann stated that she has questions to ask the applicant and the HOA which were not covered in the minutes of the last meeting. Mr. Warmbrunn explained that there is a motion on the floor to deny the case. If a member feels they need more information, then they should vote to deny the motion; and if a member feels there is adequate information to deny, then they should vote to approve the motion. Mr. Rusch added that if the other Board members feel that the Board should reopen the public hearing to gather new evidence, then he would be willing to do a friendly withdrawal of his motion. He stated that he feels the Board had enough evidence and would be willing to move forward.

Acting Chair Warmbrunn stated that he did not feel there was enough evidence. He did not feel that the Board talked to the applicant about whether he is willing to adjust some of his positions involving lighting, hours of operation, providing more trees, and other things that could cut down the noise and other issues. He stated that he did not believe some of the things said at the previous meeting to be true, and the meeting got carried away with additional rounds of public participation which the Board normally does not allow. He stated that he would be in favor of reopening the public hearing. He mentioned that the key is to have an odd number of Zoning Board members present at the meeting to avoid a tie vote.

Ms. McLaughlin stated that she is fine with either voting on the motion or the Board reopening the public hearing. Mr. Rusch withdrew his motion to deny because he did not want to be railroading the case past the members who were not present at the previous meeting.

The Zoning Board members discussed how to proceed. Mr. Rusch stated that he felt if they open the case up for the attorneys to discuss, then why not open the case for everyone else as well. Mr. Wesner stated that the Board can reopen the case. His position is to provide legal guidance; his suggestion to hold a special meeting for the attorneys involved to present their legal interpretations is not mandatory. The Zoning Board of Appeals has the option to reopen the hearing and accept new evidence and testimony.

There was discussion on whether they should hold a special meeting or continue the case to the next regular meeting. Mr. Wesner stated that staff would need to give notice of the date and time of a future meeting. The Zoning Board of Appeals members generally agreed to reopen the case at a special meeting with the date to be determined by the members' availability.

Mr. Rusch moved that the Zoning Board of Appeals reopen Case No. ZBA-2023-C-05 for consideration, to receive new evidence, and hear from interested parties and that the case be continued to a special meeting that shall be facilitated by the City staff at a later date. Ms. McLaughlin seconded the motion.

Ms. Chester	-	Yes	Mr. Warmbrunn	-	Yes
Ms. Uchtmann	-	Yes	Ms. McLaughlin	-	Yes
Mr. Rusch	-	Yes			

The motion passed by unanimous vote.

Acting Chair Warmbrunn encouraged the members of the Zoning Board to respond to City staff as soon as possible with their availability for future dates to hold the special meeting. Mr. Garcia noted that the earliest date they could hold a special meeting would be December 6, 2023 and still be able to meet the notification requirements.

E. CONTINUED PUBLIC HEARINGS

There were none.

F. NEW PUBLIC HEARINGS

There were none.

G. UNFINISHED BUSINESS

ZBA-2023-C-05 – A request by Wes Taylor, on behalf of Taylor Construction and Design, LLC, for a conditional use permit to allow a self-storage facility at 205 North High Cross Road in the B-3 (General Business) Zoning District.

[Since the Board voted to reopen and continue the case to a special meeting during Written Communications, there was no further action taken at this point on the agenda.]

H. NEW BUSINESS

There was none.

I. PUBLIC INPUT

Acting Chair Warmbrunn summarized the rules for public input.

Kenton McHenry approached the Zoning Board of Appeals members to encourage them to visit Beringer Commons. He stated that no number of trees will change the way the proposed project would look from Beringer Commons. Beringer Commons is a high-class neighborhood with custom houses.

J. STAFF REPORT

There was none.

K. STUDY SESSION

There was none.

L. ADJOURNMENT OF MEETING

The meeting was adjourned at 7:48 p.m.

Respectfully submitted,



Kevin Garcia, Secretary
Zoning Board of Appeals