



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Mayor Diane Wolfe Marlin and City Council Members

FROM: Lorrie Pearson, AICP, Community Development Services Director
Marcus Ricci, AICP, Planner II

DATE: January 9, 2020

SUBJECT: A Resolution of Protest Against a Proposed Text Amendment to the Champaign County Zoning Ordinance (CCZBA-971-AT-19 / Financial Assurance Requirements)

Introduction

The Champaign County Zoning Administrator requests an amendment to § 6.1.5.Q.(4)e. of the Champaign County Zoning Ordinance (Ordinance) regarding minimum requirements for financial institutions providing financial assurances for proposed solar farm developments. This proposed text amendment is of minimal interest to the City of Urbana, because it will not affect zoning and land development decisions within the City's one-and-a-half-mile extraterritorial jurisdiction (ETJ). The City has subdivision and land development jurisdiction within the ETJ, while the County holds zoning jurisdiction in this area.

Background

According to the applicant, at its May 9, 2019 meeting, the Champaign County Environmental Land Use Committee (ELUC) reviewed a memorandum regarding proposed changes to solar farm text amendment, Case No. 895-AT-18. This memo included proposed changes to the minimum required credit rating for financial institutions headquartered in Champaign County that are issuing letters of credit for a proposed solar farm development. The Ordinance currently requires that a financial institution providing financial assurance for decommissioning solar farms must have a minimum corporate debt rating of "A" under the S&P rating system or "A2" under the Moody's rating system. County staff were contacted about establishing alternative minimum credit ratings for banks headquartered in Champaign County. The proposed changes would include the option of referencing the Kroll rating system and requiring a minimum corporate debt rating of "A-" under this system. This would make at least one county-headquartered financial institution now eligible to issue letters of credit; it may make additional institutions eligible, as well. Exhibit A shows the current and proposed text of the Ordinance.

The ELUC opened a CCZBA public hearing for this amendment at its June 6, 2019, meeting. The hearing was continued to its November 14, 2019, meeting, and then to its January 16, 2020, meeting. These meeting memoranda can be found at http://www.co.champaign.il.us/CountyBoard/meetings_ZBA.php. The ELUC will hold public hearings on this case at its February 6 and March 5, 2020, meetings. The Champaign County Board would hear this case at its March 19, 2020, meeting, at the earliest.

Discussion

County Zoning

City staff reviewed the proposed text amendment to determine potential impacts to land within the City's boundary and ETJ, and for potential impacts to the City's ability to plan or manage development. **Staff does not anticipate a negative impact to the City or to the City's ability to plan or manage growth or development.** The proposed requirement for locally-comparable financial assurances will not affect the City's ability to plan or manage growth.

Urbana 2005 Comprehensive Plan

By State law, the City has the authority to review zoning decisions within its ETJ for consistency with the City's comprehensive plan. Therefore, Champaign County's proposed Zoning Ordinance text amendment should be reviewed for consistency with the City of Urbana's 2005 Comprehensive Plan, which includes the following pertinent goals and objectives:

Goal 21.0 Identify and address issues created by overlapping jurisdictions in the one-and-one-half mile Extraterritorial Jurisdictional area (ETJ).

Objectives 21.1 Coordinate with Champaign County on issues of zoning and subdivision in the ETJ.

21.2 Work with other units of government to resolve issues of urban development in unincorporated areas.

Goal 33.0 Provide maximum service and dependable utilities.

Objective 33.5 Promote the use of alternative energy sources, such as wind and solar.

The proposed zoning ordinance text amendment is generally consistent with these City goals and objectives by seeking to increase the number of financially-healthy financial institutions able to issue letters of credit for proposed solar farm developments.

Impacts to City of Urbana Zoning

Staff does not anticipate a negative impact to the City or to the City's ability to plan or manage growth or development. Within the City's municipal boundaries, the proposed text amendment does not directly affect the use of land, affect the City's ability to manage growth and development, or impose any additional burden on the City.

Plan Commission

The Plan Commission discussed the proposed text amendment at its December 5, 2019, regular meeting. Draft meeting minutes are provided in Exhibit B. The salient discussion point was the interpretation that one additional financial institution would be able to provide financial assurances.

The Plan Commission voted unanimously (eight ayes, zero nays) to recommend DEFEATING A RESOLUTION OF PROTEST for CCZBA Case No. 971-AT-19.

Summary of Staff Findings

1. The Champaign County Zoning Administrator proposes an amendment to § 6.1.5.Q.(4)e. of the Champaign County Zoning Ordinance to modify the minimum requirements for financial institutions providing financial assurances for proposed solar farm developments.

2. The proposed text amendment is generally compatible with the land use policy goals and objectives of the 2005 Urbana Comprehensive Plan, which promotes coordination with Champaign County on zoning, subdivision, and urban development issues, and promotes the use of alternative energy sources.
3. The proposed text amendment would not pose significant negative impacts to land uses or to the ability of the City to manage growth and development of land currently within the City's ETJ, or impose additional burdens on the City.

Options

City Council has the following options in **CCZBA Case No. 971-AT-19**, a request to amend the Champaign County Zoning Ordinance to modify requirements for issuing financial assurances for proposed solar farm developments:

- a. **Defeat** a resolution of protest; or
- b. **Defeat** a resolution of protest, contingent upon specific provisions to be identified; or
- c. **Approve** a resolution of protest.

Recommendation

At its December 5, 2019, meeting, the Urbana Plan Commission voted eight ayes to zero nays to forward Case **CCZBA 947-AT-19 (Financial Assurance Requirements) to City Council with a recommendation to DEFEAT a resolution of protest**. Staff concur with the Plan Commission's recommendations.

Attachments: Exhibit A: Proposed Marked-up Text of Case 947-AT-19
Exhibit B: Minutes of December 5, 2019, Plan Commission Meeting – DRAFT

Full County Memos available at http://www.co.champaign.il.us/CountyBoard/meetings_ZBA.php

cc: John Hall, Director, Champaign County Planning and Zoning
Susan Burgstrom, Planner, Champaign County Planning and Zoning.

RESOLUTION NO. 2020-01-005R

**A RESOLUTION OF PROTEST AGAINST A PROPOSED TEXT AMENDMENT TO
THE CHAMPAIGN COUNTY ZONING ORDINANCE**

(CCZBA-971-AT-19 / Financial Assurance Requirements)

WHEREAS, the Champaign County Zoning Administrator is requesting a text amendment to the Champaign County Zoning Ordinance in Champaign County Case No. 971-AT-19 to address proposed large- and medium-scale photovoltaic (PV) solar arrays in the unincorporated areas of Champaign County. This amendment modifies the financial minimum requirements for financial institutions providing financial assurances for proposed PV solar arrays; and

WHEREAS, the proposed text amendment has been submitted to the City of Urbana for review and is being considered by the City of Urbana under the name of “CCZBA-971-AT-19”; and

WHEREAS, pursuant to the provisions of State of Illinois Compiled Statutes 55 ILCS 5/5-12014 that states in cases of any proposed zoning amendment where the land affected lies within one-and-one-half (1-1/2) miles of the limits of a zoned municipality, the corporate authorities of the zoned municipality may by resolution issue written protest against the proposed text amendment; and

WHEREAS, the proposed text amendment is compatible with the Goals and Objectives and Future Land Use Map of the 2005 City of Urbana Comprehensive Plan; and

WHEREAS, the Urbana Plan Commission met on December 5, 2019, to consider the proposed text amendment and voted with eight ayes and zero nays to forward to the City Council a recommendation to defeat a resolution of protest; and

WHEREAS, the Urbana City Council, having duly considered all matters pertaining thereto, finds and determines that the proposed text amendment is not in the best interest of the City of Urbana.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. The City Council finds and determines that the facts contained in the above recitations are true.

Section 2. That the Urbana City Council hereby resolves that the City of Urbana, pursuant to the provisions of 55 ILCS 5/5-12014, does hereby APPROVE a Resolution of Protest against the proposed text amendment as presented in CCZBA-971-AT-19.

PASSED BY THE CITY COUNCIL this _____ day of _____, 2020.

AYES:

NAYS:

ABSTENTIONS:

Charles A. Smyth, City Clerk

APPROVED BY THE MAYOR this _____ day of _____, 2020.

Diane Wolfe Marlin, Mayor

Exhibit A: Proposed Marked-up Text of Case 971-AT-19

PRELIMINARY DRAFT

PROPOSED AMENDMENT FOR CASE 971-AT-19

1. Revise Section 6.1.S Q.(4)e. as follows:

- e. The long term corporate debt (credit) rating of the letter of credit issuing financial institution by both Standard & Poor's Financial Services LLC (S&P) and Moody's Investors Service (Moody's) shall be equal to or greater than the minimum acceptable long term corporate debt (credit) rating, as follows:
 - (a) The Zoning Administrator shall verify the long term corporate debt (credit) rating of the proposed financial institution by both Standard & Poor's Financial Services LLC (S&P) and or Moody's Investors Service (Moody's).
 - (b) The minimum acceptable long term corporate debt (credit) rating of the proposed financial institution shall be a rating of "A" by S&P or a rating of "A2" by Moody's.
 - (c) Notwithstanding the requirements of Section 6.1.5 Q.(4)e.(a)-(b), if the financial institution issuing the letter of credit is headquartered in a municipality within Champaign County, Illinois, an alternative minimum acceptable credit rating shall be a rating of "A-" by the Kroll Bond Rating Agency and shall be verified by the Zoning Administrator.
 - (ed) Whenever the most current long term corporate debt (credit) rating of the proposed financial institution by either S&P or Moody's, or in the case of a financial institution headquartered in a municipality in Champaign County, Illinois, the Kroll Bond Rating Agency is lower than the minimum acceptable long term corporate debt (credit) rating, the letter of credit shall be replaced with a new irrevocable letter of credit from an issuing financial institution whose most current long term corporate debt (credit) rating by either S&P or Moody's meets or exceeds the minimum acceptable long term corporate debt (credit) rating.

Exhibit B: Plan Commission Meeting Minutes December 5, 2019

MINUTES OF A REGULAR MEETING

URBANA PLAN COMMISSION

DRAFT

DATE: December 5, 2019

TIME: 7:00 P.M.

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

MEMBERS PRESENT: Barry Ackerson, Dustin Allred, Jane Billman, Andrew Fell, Tyler Fitch, Lew Hopkins, Jonah Weisskopf, Chenxi Yu

STAFF PRESENT: Kevin Garcia, Planner II; Marcus Ricci, Planner II

OTHERS PRESENT: Jahnisi A., Karen Fresco, Carlin Hastings, Rolf Hudall, Malik Jackson, Michael Kilcullen, Andrew Koteris, Samantha Lenocho, Michael Mirrs, Nicole Mormando, Alice Novak, Maximo Pita, Charley Rasmussen, Eric Ziegler

COMMUNICATIONS

- Email from Susan Burgstrom regarding the splitting of CCZBA-947-AT-19 into two cases, CCZBA-947-AT-19 and CCZBA-971-AT-19.

NEW BUSINESS

CCZBA-948-AT-19 – A request by the Champaign County Zoning Administrator to amend Section 8.3.2 to authorize a variance to rebuild a nonconforming structure before the structure is damaged.

Chair Fitch opened this case. Marcus Ricci, Planner II, presented the staff report to the Plan Commission. He explained the reason for the proposed text amendment.

Mr. Fell stated that most property owners discover that their property is non-conforming after something happens and they want to rebuild. Mr. Ricci replied that the language is written for when a non-conformity is identified when the owner applies for other variances.

Mr. Hopkins commented that there is no language in the proposed text amendment prohibiting a property owner from proactively seeking a variance in the event something should happen to

Exhibit B: Plan Commission Meeting Minutes December 5, 2019

their property. He could see a property owner asking for this type of variance to be able to pay a lower insurance premium because the variance would allow the non-conformity to continue should it need to rebuild. Mr. Ricci said that was correct.

Mr. Weisskopf asked if there was another way of solving the problem...maybe by amending the percentage of damage to a property to allow them to rebuild. Mr. Ricci said that Champaign County could amend the percentage, but then there would be some property that is damaged just above the new percentage and the owner would need to request a variance to rebuild.

Mr. Weisskopf asked for clarification that more than 50% of the properties in West Urbana have non-conforming structures. Mr. Ricci said that was correct. He pointed out that the proposed text amendment does not cover non-conforming uses; only non-conforming structures.

Chair Fitch opened the case for public input.

Michael Kilcullen approached the Plan Commission to speak. He asked if there would be a time limit on a variance for this nature. Can the variance be sold or transferred with the property? The unintended consequences have not been thought of yet so he encouraged the Plan Commission members to think about them before making a decision about this case.

Another issue is that part of the idea of allowing variances for non-conforming structures to be rebuilt becomes a non-conformity due to change of laws or standards. We want new structures to conform to the new laws and rules over time, so giving a preemptive variance could create many problems.

Whoever creates the non-conformity, such as the Illinois Department of Transportation using eminent domain to acquire land to widen the streets, should compensate or give the property owner money to use to rebuild should something ever happen to their property. It should not come from insurance or from the public or taxpayer.

He stated that he believed variances of this nature were not necessary because something that has become non-conforming may likely become conforming again in the future when the laws or regulations change. We should wait until the moment when the variance is needed.

Chair Fitch closed the public input portion and asked if any of the Plan Commission members had additional questions for City staff.

Mr. Ackerson asked if a variance of this nature could be passed down to future owners of a property. Mr. Ricci responded that he was not an expert in the language in the Champaign County Zoning Ordinance. He noted that the proposed type of variances would be granted by the Champaign County Zoning Board of Appeals. Should a property be annexed into the City of Urbana, the City would not be required to honor the variance; however, the variance could be negotiated as part of an annexation agreement between the property owner and the City of Urbana.

Mr. Hopkins wondered what would happen if the City of Urbana annexes a property with a structure that was built while the property was located in Champaign County jurisdiction and the

Exhibit B: Plan Commission Meeting Minutes December 5, 2019

property does not meet the City's regulations. Does the property annex into the City as a non-conforming property? Mr. Ricci said yes.

Mr. Hopkins asked if the City has the ability to grant variances with time limitations. Mr. Ricci said no.

Chair Fitch opened the case for Plan Commission discussion and/or motion(s).

Mr. Ackerson stated that if this was a City text amendment, then he would have more discussion and concerns. It gave him qualms to think that a variance could be granted for an indefinite period of time for something that is already non-conforming. Since it is a County text amendment, he did not see it directly affecting the City.

Mr. Ackerson moved that the Plan Commission forward Case No. CCZBA-948-AT-19 to the 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. Ackerson	-	Yes	Mr. Allred	-	Yes
Ms. Billman	-	Yes	Mr. Fell	-	Yes
Mr. Fitch	-	Yes	Mr. Hopkins	-	Yes
Mr. Weisskopf	-	Yes	Ms. Yu	-	Yes

The motion passed by unanimous vote.

Mr. Garcia noted that this case would be forwarded to the City Council on December 16, 2019.