

**MINUTES OF THE PLAN COMMISSION**  
**January 25, 2016**

The regular meeting of the Plan Commission was called to order by Chairman Mark Moore at 8:10 p.m. at the Village Hall.

Members present: Chairman Mark Moore, Amy Flores, Matthew Krummick, Walter Oakley, Kurt Schultz, and David Semmelman.

Members absent: William Cotey.

Village Staff present: John Spoden, Director of Community Development; David Smith, Senior Planner, and Fred Chung, Senior Project Engineer.

Commissioner Oakley moved, seconded by Commissioner Flores, to approve the November 23, 2015, Plan Commission meeting minutes.

Motion carried 6 - 0.

Commissioner Oakley moved, seconded by Commissioner Flores, to approve the December 14, 2015, Plan Commission meeting minutes.

Motion carried 6 - 0.

**OLD BUSINESS:**

**PC 15-25 Village of Libertyville, Applicant**

**Request is for a Text Amendment to Sections 5-2, 5-3, and 2-2 in order to regulate tobacco stores, vape stores, and e-cigarette stores in the C-1, Downtown Core Commercial District and C-2, Downtown Community Commercial District.**

Mr. David Smith, Senior Planner, stated that Village Staff is proposing a Text Amendment to the Zoning Code in order to regulate tobacco stores, vape stores, and e-cigarette stores in the C-1, Downtown Core Commercial District and C-2, Downtown Community Commercial District.

Mr. Smith stated that Staff surveyed other communities to see how they are regulating vape and e-cigarette shops. He stated that Lindenhurst prohibits vape and e-cigarette shops until their Zoning Code is amended to permit them. He stated that Vernon Hills allows the sale of vape and e-cigarette products, but currently prohibits vape lounges. He stated that Mundelein allows the sale of vape and e-cigarette products and treats vaping lounges in the same way as any other indoor facility that permits smoking and must comply with Building Code ventilation regulations. He stated that Grayslake allows them as a retail use. He stated that Long Grove will not permit a use if it cannot be found in the NAICS, currently this includes vape shops. He stated that Highland Park currently does not address this use in their codes. He stated that Lake Bluff stated that if they cannot find a particular use in the SIC then it is not permitted. He stated that Lake Bluff indicated that if they were approached by a vape shop establishment seeking

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occupancy in their village, they would require them to apply for a text amendment to their zoning code. He stated that Gurnee allows e-cigarette sales as a retail goods establishment, but they have not yet been approached by an e-cigarette or vape lounge establishment as of yet.

Mr. David Pardys, Village Attorney, stated that this is relatively a new area in terms of permitting this land use in communities. He stated that some communities have been hesitant to allow them as it is still not known what the second effect would be from this use. He stated that some of these stores include nicotine in their products where others might not. He stated that it is difficult to classify at this point.

Mr. John Spoden, Director of Community Development, stated that there currently is a vape shop in place now at Cambridge Plaza. He stated that when the occupancy permit application was being reviewed, it was decided then that it was to be classified as Miscellaneous Retail. He stated that the Police Department had concerns that other paraphernalia products would be sold, so an agreement with the Cambridge Plaza tenant was made that products sold would only be associated with vaping. He stated that the Village has received another application for another vape shop that includes a lounge for the property located in the Liberty Crossings commercial center which is in the C-2, Downtown Community Commercial District. He stated that regardless of what ordinances are passed regarding the regulation of vape shops there is currently a vape shop that has occupancy in Cambridge Plaza and another application under review that is seeking occupancy at Liberty Crossings.

Mr. Pardys stated that these vape shops might claim that it is not different from any other miscellaneous retail use and may ask why they couldn't take occupancy in a commercial zoning district.

Mr. Spoden that other retail establishments are already selling vape and e-cigarette products and are able to do so because these products do not comprise the majority of the establishment inventory. He stated that Staff is proposing to restrict the shops themselves from the C-1 and C-2 Districts.

Chairman Moore asked if additional restrictions could be incorporated to include a separation requirement between vape shops and schools for example.

Commissioner Flores stated that Buffalo Grove is currently reviewing their regulations regarding these types of uses.

Mr. Spoden stated that at the Staff review level, it was a challenge to apply more restrictive regulations on a use that is still not known if it has the same or worse impact as a tobacco store would.

Commissioner Schultz asked if tobacco sales are regulated at all. Mr. Pardys stated that there may be tax regulations for tobacco sales, but is not aware of any other licensing requirements. He stated that in terms of any potential impacts on health, the FDA has not provided any conclusive findings as of yet.

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Commissioner Schultz asked if the Village has banned public indoor vaping. He stated that some other communities have banned indoor public vaping. Mr. Pardys stated that the Illinois Smoke Free Act which prohibits smoking in public places defines smoking as “carrying, smoking, burning, or inhaling of any kind of lighted smoking equipment.” He stated that it does not appear that at the State level the e-cigarettes or vape mechanisms have been addressed as items that are smoked.

Chairman Moore asked if the Village can consider smoking to include e-cigarettes. Mr. Pardys stated that Chairman Moore’s question would suggest that e-cigarettes are lit. He stated that it is his assumption that there must be some type of heating element that causes the vaporization within the e-cigarette and that this may not necessarily be combustion. He stated that he prepared an ordinance for another community that heavily regulated e-cigarettes and it talked about the fact that there is not much known about the effects of e-cigarettes as part of the justification of regulating them. He stated that there are some articles published that contend that there is a danger that the e-cigarettes are a gateway to smoking tobacco.

Mr. Pardys stated that the Village is a non-home rule community which may pose certain limitations on what can be regulated. He stated that if it is determined that vaping is another form of smoking then the State Statute regarding the Illinois Smoke Free Act may enable non-home rule communities more authority to regulate in a more restrictive fashion public vaping.

Mr. Pardys stated that any non-home rule community may restrict smoking in public places, but that it can be no less restrictive than the State Statute. He stated that if the Village invokes similar restrictions upon vaping as they have with the restrictions on smoking in public, it runs the risk of being legally challenged. He stated that if the Village believes that this use poses some type of reason for concern then the Village could regulate them.

Commissioner Schultz asked if the Village can completely ban them. Mr. Pardys stated that the Village could prohibit them, but the Village would have to consider how they would justify the prohibition.

Commissioner Schultz stated that consideration should be given to banning these uses based on the reason the research on these products is still very new and inconclusive. He stated that the FDA does not have research results on the long term effects of these products.

Mr. Spoden stated that Staff’s reaction to the vape shop seeking occupancy at Libertyville Crossings was that of concern due to its proximity to a public school and church property.

Commissioner Krummick stated that consideration should be given to taking action on tonight’s requested text amendment as a starting point.

Mr. Pardys stated tonight’s text amendment request is more limited in scope and may be easier to justify. He read from a prior ordinance the he drafted for another community stating, “That the potential effects of inhaling second hand vapor from e-cigarettes, including liquid nicotine, and other toxins have not been fully studied and are currently unknown.” He stated that another study states that e-cigarettes do not burn or smolder the way that conventional tobacco cigarettes

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do, but emit aerosol and other items and that they should be banned anywhere that conventional tobacco smoking is prohibited.

Chairman Moore stated that he agrees that the vaping of e-cigarettes and the use of other vaping products should be banned in all indoor public places and that this would apply to vaping lounges. He stated that the ability to retail the products should be allowed.

Chairman Moore stated that since there does not seem to be any additional or more restrictive licensing requirements then he does not see a reason to prohibit the sale of these products. He stated that he prefers that the Village pursue the course of action in which the vaping indoors, the trying of the product indoors is prohibited.

Commissioner Flores stated that it appears that the application for occupancy by the vape shop for the tenant space in Libertyville Crossings would be considered grandfathered as the application was received prior to the conclusion of the public hearing for the text amendment.

Mr. Spoden stated that the Plan Commission could overrule Staff's interpretation and rule that the vape shop is not Miscellaneous Retail and is currently not listed in the Zoning Code or in the NAICS manual. He stated that tobacco is listed.

Chairman Moore stated that vaping seems to correlate more closely to cigarette smoking instead of Miscellaneous Retail.

Mr. Pardys stated that the State Statute does not prohibit cigarette smoking inside tobacco stores.

Commissioner Semmelman stated that the grandfathered vape shops might be able to use the product in their shops, but that should not stop the Village from adopting an ordinance that would prohibit vaping in any other public space.

Mr. Pardys stated that an ordinance could be adopted banning vaping, but it is important to remember that the Village is a non-home rule community and could be challenged.

Commissioner Schultz asked why the proposed text amendment would permit the vape shops in the C-3 and C-4 District. Mr. Spoden stated that it was partly intended to keep these types of uses out of the downtown.

Commissioner Schultz stated that if the Village must accommodate these types of uses consideration could be given to permitting them in the I-1 District as was done with the other Adult Uses.

Mr. Smith stated that if these are listed then they would have to be where retail is permitted. He stated that the northwest corridor where it is predominately the I-1 District, retail is not permitted.

Mr. Pardys stated that the Zoning Administrator can say that it is not listed as a permitted or special permitted use.

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Commissioner Krummick stated that since it is not listed in the SIC or NAICS then that supports the Village's decision to not allow them if they choose to go that route.

Mr. Pardys stated that the Zoning Code does indicate that if the land use is not specifically listed then the Village can take the stance that it is not allowed. He stated that the problem could be that there is a category called Miscellaneous Retail and within that category Tobacco Sales is listed. A vape shop may ask how they are any different from a tobacco store under the broad category of Miscellaneous Retail.

Mr. Pardys stated that the NAICS under Miscellaneous Retail does not mention vaping. He stated that this may allow the Village to take the position that since it does not mention it then the Village can then therefor prohibit vaping without a text amendment to the Zoning Code.

Chairman Moore stated that he supports an ordinance that would ban vaping in public places. He stated that it appears that some of the other communities don't allow vape shops because they are not listed specifically in the NAICS. He stated that when it does become classified in the NAICS then the Village can address it.

Mr. Pardys stated that the Zoning Administrator would have to make a formal interpretation.

Commissioner Oakley asked for clarification as to whether vape shops include the sales of drug paraphernalia or if they would be classified as drug paraphernalia.

Chairman Moore stated that vape shops are not classified at all at this point.

Commissioner Flores stated that it is her opinion that the e-cigarettes fall under the same category as tobacco sales so then she supports the idea of limiting them out of the C-1 and C-2 Districts.

Chairman Moore stated that the current proposal is to take the position that because they are not classified then they would not be permitted.

Mr. Pardys stated that the Plan Commission may not want to take action that would recognize a use that is not categorized.

Mr. Spoden stated that the Plan Commission can take action on the tobacco portion of the proposed text amendment which would restrict the tobacco stores from the C-1 and C-2 Districts.

Commissioner Semmelman stated that after the Zoning Administrator makes his determination regarding vape shops, the Village can then say that because they are not a category or listed use in the Zoning Code or in the NAICS, they are then not permitted in the Village.

Commissioner Schultz asked for clarification as to what then should the proposed text amendment include, if that would then be to prohibit tobacco stores from the C-1 and C-2 Districts. Commissioner Schultz asked if the C-3 District could be included.

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Chairman Moore stated in addition to restricting tobacco from certain districts, also require a certain separation from schools.

Commissioner Schultz stated that he wants further clarification regarding the suggested condition to include a certain separation between a tobacco store and other land uses at risk.

Mr. Pardys stated that the decision tonight seems to be discussing with the Zoning Administrator, Kevin Bowers, to see if he agrees with the interpretation that if a particular land use, in this case a vape or e-cigarette lounge, is not listed in the Zoning Code or can be found in the NAICS, then it would not be permitted without a text amendment to the Zoning Code. He stated that in the interim the Village Board cannot make an independent regulatory ruling as to whether or not to allow smoking/vaping indoors in public places. He stated that the Plan Commission can continue the current text amendment proposal to allow further study as to whether other districts should be included to prohibit tobacco stores and whether or not to incorporate a separation limitation as well.

*In the matter of PC 15-25, Commissioner Oakley moved, seconded by Commissioner Schultz, to continue this item to the February 22, 2016, Plan Commission meeting.*

*Motion carried 6 - 0.*

*Ayes: Moore, Flores, Krummick, Oakley, Schultz, Semmelman*  
*Nays: None*  
*Absent: Cotey*

**NEW BUSINESS:**

**PC 16-01 Village of Libertyville, Applicant**

**Request is for a Text Amendment to Libertyville Zoning Code regarding fences in commercial zoning districts.**

Mr. John Spoden, Director of Community Development, introduced the proposed text amendment. He stated that the current Code does not regulate fences in the downtown commercial district. He stated that the successful development of the downtown C-1 District has increased pedestrian and vehicular traffic along with parking needs in this area. He stated that the installation of fences in the C-1 District can impede both pedestrian and traffic flow, and further burden the availability of convenient parking to the area. He stated that Staff believes that careful consideration should be given to the installation of fences in the C-1 District and recommends that this subject be referred to the Plan Commission for development of an ordinance amending the Zoning Code and addressing this issue. He stated that the proposal is to state that fences may be installed and maintained in Commercial, Industrial, O-2, Office, Manufacturing and Distribution Park, and IB, Institutional Buildings Districts, except that no fence shall extend beyond the front building line of the principal structure located on the lot and that no fence may be installed or maintained within or abutting a parking lot located within the C-1 District.

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Mr. David Pardys, Village Attorney stated that there are appropriate uses for fencing in the downtown such as enclosing eating areas. He stated that the proposal is to restrict fences within or abutting parking lots in the C-1 District.

Commercial Semmelman stated that there might be circumstances in which a fence may make sense in the C-1 District.

Commercial Schultz stated that consideration could be given to making fences a Special Use Permit in the C-1 District and/or review by the Appearance Review Commission.

Mr. Pardys stated that the intent is to limit fences in the C-1 District that abut or are in parking lots.

Mr. Spoden stated that a good point was made that there may be commercial parking lots that abut residential uses and in those circumstances it may be appropriate to utilize fences along a parking lot abutting residential uses.

Commissioner Schultz stated that it may make sense to review fence permit applications on a case-by-case basis. He stated that perhaps incorporating a variation process could be considered.

Mr. Pardys stated that anything existing would be grandfathered.

Commissioner Schultz asked for clarification as to what is becoming a problem with fencing in the C-1 District as to whether it is “abutting” or “within”. Mr. Spoden stated that it is both abutting and within that should be addressed.

Chairman Moore stated that it will be problematic to use the term “abutting” in a parking lot.

Mr. Spoden stated that the intent is meant to apply towards those circumstances in which a single parking lot may have multiple property owners.

Commissioner Flores asked if the language in the text amendment can include, “shall not block pedestrian access”.

Mr. Pardys stated that property owners might respond by contending that the Village does not have the right to tell property owners that have to allow people to trespass onto their property.

Commissioner Oakley stated that consideration could be given to requiring a Special Use Permit for fences in the C-1 District.

Commissioner Schultz agreed that it would allow them an opportunity to review fence permit applications.

Mr. Pardys stated that fences are not necessarily a “Use”.

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Mr. Spoden stated that the Plan Commission has given Staff some great feedback and will request a continuance to the March 14, 2016, meeting in order to review the case more closely and come back with a recommendation.

*In the matter of PC 16-01, Commissioner Schultz moved, seconded by Commissioner Semmelman, to continue this item to the March 14, 2016, Plan Commission meeting.*

*Motion carried 6 - 0.*

*Ayes: Moore, Flores, Krummick, Oakley, Schultz, Semmelman*  
*Nays: None*  
*Absent: Cotey*

**COMMUNICATIONS AND DISCUSSION:**

Mr. John Spoden, Director of Community Development, stated that the Village Board turned down the request for the Plat of Subdivision amendment for the East Ellis lots. He stated that the Village Board approved the Plat of Subdivision amendment for the lots on Elm Court, but it was not unanimous. He stated that the cost estimate for the construction of the new parking garage in the Civic Center parking lot was 1.5 million dollars over budget and that the project will have to be re-bid. He stated that the next TOD Steering Committee meeting is scheduled for Wednesday, January 27, 2016.

Commissioner Schultz moved, seconded by Commissioner Flores, to adjourn the Plan Commission meeting.

Motion carried 6 - 0.

Meeting adjourned at 9:20 p.m.