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November 20, 2020

Honorable Mayor and City Council
Kewanee City Hall
401 E. Third Street
Kewanee, Illinois 61443-2365

RE: Report from Plan Commission for November 19, 2020 Meeting.

The Plan Commission convened on November 19, 2020 via ZOOM, commission members, Edleman and Minella were absent. For business, there were three cases to be heard.

Case Number 1: Hearing on Don Grabbe, DBA Guppy's Lake LLC., Beer Garden Special Use Permit.

This case was brought back to the Plan Commission for a hearing to make changes or possibly revoke due to noise complaints received by the City. This case was heard over two separate meetings. The first was on October 22, 2020. The Plan Commission requested additional information and tabled the case until the November meeting.

At the June 27, 2019 Plan Commission meeting, the Plan Commission passed a recommendation to the City Council, by a vote of eight in favor, none opposed and one absent, that an application to grant a Special Use Permit to allow a beer garden/outdoor eatery be approved by the City Council. Specifically, the Plan Commission recommended that a Special Use Permit allowing a beer garden/outdoor eatery at 831 Lake St. be granted to Don Grabbe.

The following are the minutes from the June 27, 2019 Meeting:

The Public Hearing:

At 7:00 p.m. on June 27, 2019, the hearing on the proposed Special Use Permit to allow a beer garden/outdoor eating area at 831 Lake St. was held. Don Grabbe was present to represent the application.

- Grabbe stated that he has purchased the property for his semi-retirement and has done a lot of clean-up and remodeling inside the building. His intention is to operate a nice neighborhood bar for the community. Grabbe stated that the previous owner/operator of the location had a special use permit for a beer garden and he wishes to continue the same.

No others were present to speak in support of the petition.

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- Morrison asked if there were any persons present to speak in opposition of the petition. Charlene and James McLemore of 810 Lake St. came forward.
- The McLemores expressed their concerns over the noise at the location over the past years. They stated the noise comes from loud music, people yelling and fights. They said they have had to call the police department numerous times a week in the past and had to call again once recently.
- The McLemores said they do not have a problem with the beer garden itself, but don't like the noise and just want the noise kept down so they don't hear it from inside their house.
- Grabbe replied to the concerns from the McLemores and said that he wants to operate a nice neighborhood/community bar. Grabbe stated he will move the speakers so they point inward towards the beer garden space and will limit the volume.
- There was discussion about the process to revoke the special use permit if noise starts to be an issue.
- PC member Edleman stated he doesn't think the Commission should base their opinion off of previous owners and noise complaints.
- The McLemores came forward once again and stated if Grabbe can keep the noise down, they have no problem with it.

Additionally, the Plan Commission recommends by a vote of eight in favor, none opposed, one absent that the following six stipulations be placed on the Special Use Permit.

1. The Special Use Permit for a beer garden/outdoor eating area is granted to Don Grabbe only and is not transferable to any future owners or operators on the site.
2. The configuration and uses of various parts of the beer garden/outdoor eating area shall remain in substantial compliance with the floor plan submitted along with the petition for the Special Use Permit.
3. No package sale of liquor, or carryout sale of liquor is allowed.
4. The proposed beer garden/outdoor eating area shall comply with Chapter 111 Alcoholic Liquor and section 155.117 Beer Garden/Outdoor Eating Area of the City Code.
5. Any violation of the terms and condition of the Special Use Permit are subject to review and possible revocation by the Plan Commission and City Council.
6. The beer garden/outdoor eating area shall close at 11:00 pm Sunday through Thursday and at midnight Friday and Saturday.

On August 25, 2020, Keith Edwards, Director of Community Development for the City of Kewanee, received a noise complaint that occurred on August 22, 2020. Edwards also received a complaint concerning the screening of the Beer Garden is incomplete. Edwards called Grabbe and advised him of the complaint. Edwards also sent a letter to Grabbe advising of the

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complaint and requesting that Grabbe take action to eliminate the noise complaints and to install the missing fence materials.

Additionally, Edwards was advised of noise complaints that occurred on September 6, 2020 and September 13, 2020.

Staying in compliance with the wishes of the Plan Commission from the June 27, 2019 meeting when there was discussion concerning noise complaints, this case is being brought back to the Plan Commission for hearing. The Plan Commission may issue warning, update the stipulations on the Special Use Permit, or take other action as the Plan Commission sees fit to recommend to the City Council.

At the October 22, 2020 Meeting, Commission members Costenson, Edleman, Hemphill and Hodge were absent.

The Public Hearing:

At 7:00 p.m. on October 22, 2020, the hearing to make changes or possibly revoke the Beer Garden Special Use Permit at 831 Lake St. was held. Don Grabbe was present to represent Guppy's Lake.

- Morrison stated that there were 6 violations/noise complaints recently.
- Grabbe stated that every time he has a special event or music on the patio he makes sure it is shut down at 11pm. Grabbe said the most recent complaint he was issued a ticket to appear in court. Grabbe said he appeared in court and the case was thrown out and that the judge said it wasn't warranted.
- Grabbe said that the complaints come mostly from one person and that most of his neighbors sit outside in their driveways and enjoy the music. Grabbe stated that he doesn't understand why it's becoming an issue.
- Kelly Hicks was present to speak in opposition to the Special Use Permit. Hicks complaint was concerning property that she owns directly South of 831 Lake St. Hicks stated that patrons to the bar park in the grass upon her property.
- Morrison pointed out that the hearing is concerning noise complaints. It was also brought up that parking complaints should be handled through the police department and those concerns need called in at the time they are happening.
- Hicks went on with a second complaint concerning litter that is being thrown on to her property.
- Edwards stated that the City can talk to Grabbe in reference to cleaning up litter that is being thrown into neighboring properties. Edwards also stated that the parking complaints need to be called into the police department when it is happening.
- Grabbe stated that he makes sure that litter is already being picked up and pointed out that there are no, "No Parking" signs in the areas of the parking complaint.

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- Hicks said that Grabbe's customers are not just parking along side of the road, they are parking in her yard.
- Morrison and Edwards reminded Hicks that the parking complaints need to be handled through the police department while the violation is happening.
- Lynn and Mike VanHyfte, who live across the street on Lake St. from 831 Lake St, stated a complaint concerning the loud music coming from the bar. Lynn said she can't hear her television inside her house over the music.
- Charlene McLemore, who also lives across the street on Lake St. from 831 Lake St, also stated a complaint concerning the loud music and fights. Charlene also stated she cannot hear her television inside her house over the music.
- Grabbe stated that he believes he is within his rights to have outside entertainment. He stated that his bartenders are instructed to shut down the outside juke box at 11pm on the weeknights and 12am on the weekends.
- Mirocha inquired about what the law states concerning volume level. He asked what decibel level is acceptable.
- Edwards stated that he believes the police department may have a decibel level meter but wasn't sure what the code says, if anything, for decibel level.
- Edwards suggested that the Plan Commission continue the case until the November meeting allowing Edwards to investigate the code and decibel levels.
- The Plan Commission agreed to continue the case.

RESEARCH:

With consideration to the ability to measure sound levels, the Kewanee Police Department does have a decibel meter. The case has the potential for becoming complicated with the science of sound pressure levels and what is acceptable and what is not. One could also use what is referred to as a "Reasonable Person Standard". Cornell Law School defines "Reasonable Person" as:

A legal standard used in negligence (personal injury) cases. The hypothetical reasonable person behaves in a way that is legally appropriate. Those who do not meet this standard -- that is, they do not behave at least as a reasonable person would -- are considered negligent and may be held liable for damages caused by their actions.

This would require an opinion of a Police Officer, which of course would be subjective, at the time of the complaint.

If one chooses to go with actual measurements of sound pressure levels, the decision will need to be made concerning where these measurements should be taken. Do you take the measurements at the property line of the violator? Or.... Do you take the measurement at the property line of the complainant? If you take the measurement at the property line of the complainant, then there are other things that may be of issue. For example, a lawn mower

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adjacent to the complainant's property, if measured, may be the same sound level as that of the music coming from the bar. Do these sound measurements need to be taken from inside the residence?

These are just some things for consideration for the Plan Commission.

Searching for "Noise" in the City Ordinances yielded little results.

CHAPTER 132: OFFENSES AGAINST PUBLIC ORDER

§ 132.04 DISTURBING THE PEACE.

It shall be unlawful for any person to disturb the peace by quarreling or scolding, or making an unusual noise or disturbance, or to engage in violent, tumultuous, offensive or disorderly conduct or use profane, vulgar or unseemly language to the annoyance, vexation, or disturbance of another. Any person violating the provisions hereof shall be deemed guilty of a misdemeanor.

CHAPTER 155: ZONING CODE

GENERAL USE REGULATIONS

§ 155.037 RESIDENTIAL DISTRICTS; PURPOSE.

The residential districts are established in order to protect public health, and promote public safety, convenience, comfort, morals, prosperity and welfare. These general goals include, among others, the following specific purposes:

- (A) To protect residential areas against fire, explosion, noxious fumes, offensive odors, noise, smoke, vibrations, dust, heat, glare and other objectionable factors.

§ 155.038 BUSINESS DISTRICTS; PURPOSE.

The business districts are established to protect public health, to promote public safety, comfort, convenience and the general welfare, and to protect the economic base of the city and the value of property. These general purposes include, among others, the following specific objectives:

- (B) To place in separate districts those businesses which may create noise, odors, hazards, unsightliness or which may generate excessive traffic.

LOOKING FURTHER INTO THE CODE, I FOUND THIS TABLE UNDER M-1 ZONING.

§ 155.070 M-1 MANUFACTURING DISTRICT, LIMITED.

(E) Performance standards. The following requirements shall apply:

(1) Noise.

(a) ~~The sound pressure level, to be measured as described below, shall not exceed the following decibel levels in the designated octave bands when adjacent to the designated types of use districts:~~

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Sound Level in Decibels		
Octave Band, Cycles per Second	All Residential Districts	B-1, B-2, B-3 Districts
37.5 to 75	58	73
75 to 150	54	69
150 to 300	50	65
300 to 600	46	61
600 to 1200	40	55
1200 to 2400	33	48
2400 to 4800	26	41
Over 4800	20	35

Here is some information I found on the EPA website:

<https://archive.epa.gov/epa/aboutepa/epa-identifies-noise-levels-affecting-health-and-welfare.html>

EPA Identifies Noise Levels Affecting Health and Welfare
[EPA press release - April 2, 1974]

Noise levels requisite to protect public health and welfare against hearing loss, annoyance and activity interference were identified today by the Environmental Protection Agency. These noise levels are contained in a new EPA document, "Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety (PDF)."

One of the purposes of this document is to provide a basis for state and local governments' judgments in setting standards. In doing so the information contained in this document must be utilized along with other relevant factors. These factors include the balance between costs and benefits associated with setting standards at particular noise levels, the nature of the existing or projected noise problems in any particular area, the local aspirations and the means available to control environmental noise.

The document identifies a 24-hour exposure level of 70 decibels as the level of environmental noise which will prevent any measurable hearing loss over a lifetime. Likewise, levels of 55 decibels outdoors and 45 decibels indoors are identified as preventing activity interference and annoyance. These levels of noise are considered those which will permit spoken conversation and other activities such as sleeping, working and recreation, which are part of the daily human condition.

The levels are not single event, or "peak" levels. Instead, they represent averages of acoustic energy over periods of time such as 8 hours or 24 hours, and over long periods of time such as

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years. For example, occasional higher noise levels would be consistent with a 24-hour energy average of 70 decibels, so long as a sufficient amount of relative quiet is experienced for the remaining period of time.

Noise levels for various areas are identified according to the use of the area. Levels of 45 decibels are associated with indoor residential areas, hospitals and schools, whereas 55 decibels is identified for certain outdoor areas where human activity takes place. The level of 70 decibels is identified for all areas in order to prevent hearing loss.

The Public Hearing (Continued from October 22, 2020):

At 7:00 p.m. on November 19, 2020, the hearing to make changes or possibly revoke the Beer Garden Special Use Permit at 831 Lake St. resumed. Don Grabbe was present to represent Guppy's Lake.

- Edwards reminded the Commission of their options. The Commission could elect to make no changes, make changes to the stipulations or they could choose to make a recommendation to revoke the special use permit.
- Morrison reviewed the research that Edwards provided to the Commission after the October meeting.
- Mirocha stated that he felt there should be an update to the City Ordinance to set an acceptable level in decibels.
- Mirocha explained that he has a decibel meter and performed his own experiments in his own neighborhood. He said that he didn't think that a reading of 60 decibels was an issue. Mirocha also said that where the measurement is taken from is another question that would need answered and that in his opinion it should be measured from the complainant's (whoever that may be at any particular time) property.
- Milroy expressed concern over training the police department staff on how to handle these types of complaints.
- Mirocha stated that he doesn't think the police department is handling the complaints properly at this time. Mirocha said he doesn't think this is a Plan Commission job to make the rule.
- Grabbe said that he spoke to the police department and was told that when the Boiler Room was having concerts, the officers would go across the street to the apartment building to measure the sound levels within the apartments.
- Kim Zeilman of 903 Lake St. stated she lives directly across the street from Grabbe's bar. She stated that she can hear the music coming from within the bar inside her house as late as 1:00 a.m.
- Costenson stated that Zeilman's complaint is not concerning music from the beer garden area but rather from inside the bar.

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- Milroy said that when Grabbe came to the first meeting to get the special use permit back in June 27, 2019, Grabbe stated that he wants to operate a nice neighborhood bar for the community. Milroy pointed out that there were complainants present at that first meeting and Milroy feels he has not done as he as stated and there's been many noise complaints recently.
- Sayers stated that he feels it should be left up to the police.
- Charlene McLemore, who also lives across the street on Lake St. from 831 Lake St, stated that the biggest problem with the beer garden is the live bands.

Recommendation:

After discussing the facts and testimony presented, the Plan Commission, by a vote of one in favor, six opposed, two absent, that the Special Use Permit for a beer garden at 831 Lake St. not be revoked. The Plan Commission requested that City staff research and write an ordinance that addresses sound levels generated from entertainment in a beer garden before "beer garden season" starts back up in the spring of 2021.

Case Number 2: Rezoning Request Tower Equipment Corp, 117 E. Central Blvd.

Parcel 20-33-260-002 Located at 901 117 E. Central Blvd., Rezoning Request.

Property Owner: Tyrone Johnson, 110 N. Bollman St., New Bedford, IL. 61346.

Address: 117 E. Central Blvd.

Legal Description: LOT 3 & 4 & N1/2 LOT 5 BLISHS ADD SUB OF BLK 1 CITY OF KEWANEE [EZ], Kewanee, Henry County, Illinois.

Location: Southeast corner of S. Main St. and East Central Blvd.

Dimensions: Approximately 150 feet North to South and 200 feet East to West. Except the Southeast corner which is approximately 75 feet North to South and 70 feet East to West.

Area: 0.57 Acres or 24750 Square feet, approximately.

Existing buildings or uses: Parking lot and grass area.

Current Zoning District: B-2 Business, General Retail District & R-5 Multiple-Family Dwelling District.

Surrounding Zoning: B-3 Business and Wholesale District to the Southwest, B-2 Business-General Retail District and B-1 Business-Limited Retail District to the North, R-5 Multiple-Family Dwelling District to the South, East and Northeast.

Existing Land Use: Commercial.

Proposed Land Use Map: High Density Residential.

Background Information:

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Tyrone Johnson contacted me on October 14, 2020 to discuss his purchase of the Star Courier property at 105 E. Central Blvd. Tyrone was advised, prior to purchasing the property, that the Star Courier was zoned B-2 Business District, General Retail. It was not realized until after his real estate transaction that there were two parcels involved which included the small parcel (grass lot) East of the Star Courier parking lot. This lot was also owned by the Star Courier; however, the lot is split up into two zoning districts. The west edge of the parcel appears to be zoned B-2 while the east part of the parcel is zoned R-5 Multiple Family Dwelling District. Tyrone wishes to use this grass lot as an extension of the already existing parking lot for the equipment rental storage. City staff discussed the options with Tyrone and it was decided that a request to rezone the property, so the entire property is zoned B-2, was the best option.

When looking at the surrounding area, rezoning the parcel in question would not be out of character.

The City has no argument against the request.

The Public Hearing:

At 7:44 p.m. on November 19, 2020, the hearing to rezone the parcel at 117 E. Central Blvd. was held. Tyrone Johnson was present to represent the application.

- Tyrone stated that he needs to request the rezoning so that the small parcel/grass area matches the zoning of the rest of his property to be used for parking and outdoor storage of his equipment rentals.

There were no others present to speak in support of the application.

There were no others present to speak in opposition of the application.

Recommendation:

After discussing the facts and testimony presented, the Plan Commission, by a vote of seven in favor, none opposed, two absent, that the request to rezone the property located at 117 E. Central Blvd. from R-5 Multiple Family Dwelling District to B-2 Business, General Retail District be approved by the City Council.

Case Number 3: Addition of Shooting Range under B-3 Business and Wholesale District.

The City has had a couple of inquiries, one a couple of years ago and one just recently, concerning the installation of a commercial indoor shooting range. Currently this is not a use listed within our zoning code. Staff is requesting the Plan Commission to discuss the use of Shooting Range to be added under Special Uses within B-3 Zoning Districts. By adding it as a

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Special Use, the Plan Commission and City Council will have control over the placement of such use as well as possible stipulations.

§ 155.068 B-3 BUSINESS AND WHOLESALE DISTRICT.

(B) Special uses. The following uses may be allowed by special use permit per the provisions of §§ 155.155 through 155.157.

(7) Indoor shooting range.

The Public Hearing:

At 7:54 p.m. on November 19, 2020, the hearing to add Shooting Range to be added under Special Uses within B-3 Zoning Districts was held.

- Edwards stated, that in his time in building and zoning for the City, he has had a couple of soft inquiries concerning a potential indoor shooting range. Currently we do not have the use of a shooting range listed in our code. Edwards pointed out that other communities in the Quad City area and also in Geneseo have indoor shooting ranges. Edwards stated that he had discussion with the City Manager on the topic and staff feels that B-3 zoning would be a good place for this usage and by adding it as a special use, it allows for some additional control/input from the Plan Commission and City Council.
- Mirocha stated that he felt it was a good idea to be proactive and add the use to our code.

Recommendation:

After discussing the facts and testimony presented, the Plan Commission, by a vote of six in favor, none opposed, three absent, that the special use of Indoor Shooting Range be added to list of allowed special uses under B-3 zoning.

There being no further business, the meeting adjourned at 7:54 p.m.

Respectfully yours,



Steve Morrison, Chairman

By: 

PLAN COMMISSION

Date

11/19/2020

Attendance Case 1

Case 2

Case 3

	Yes abstain	no absent	yes abstain	no absent	yes abstain	no absent	yes abstain	no absent	yes abstain	no absent
COSTENSON	✓	no absent	yes abstain	no absent	yes abstain	no absent	yes abstain	no absent	yes abstain	no absent
EDLEMAN	✗	no absent	yes abstain	no absent	yes abstain	no absent	yes abstain	no absent	yes abstain	no absent
HEMPHILL	✓	no absent	yes abstain	no absent	yes abstain	no absent	yes abstain	no absent	yes abstain	no absent
MINELLA	✗	no absent	yes abstain	no absent	yes abstain	no absent	yes abstain	no absent	yes abstain	no absent
MIROCHA	✓	no absent	yes abstain	no absent	yes abstain	no absent	yes abstain	no absent	yes abstain	no absent
MORRISON	✓	no absent	yes abstain	no absent	yes abstain	no absent	yes abstain	no absent	yes abstain	no absent
HODGE	✓	no absent	yes abstain	no absent	yes abstain	no absent	yes abstain	no absent	yes abstain	no absent
SAYERS	✓	no absent	yes abstain	no absent	yes abstain	no absent	yes abstain	no absent	yes abstain	no absent
MILROY	✓	no absent	yes abstain	no absent	yes abstain	no absent	yes abstain	no absent	yes abstain	no absent
			14	6N	74	OK	64	OK		