

**Planning and Zoning Commission – Meeting Minutes
November 30, 2022 – 7:30 p.m.**

I. Call to Order and Roll Call

DCD Jennings called the meeting to order at 7:32 PM.

DCD Jennings called for a motion to appoint a Chairman Pro-Tem for the duration of the Planning and Zoning meeting.

Motion by Commissioner Cotton, second by Commissioner Mulcrone, to appoint Commissioner Heidner as Chairman Pro-Tem for the duration of the meeting.

Roll call vote:

AYES: 4 – Cotton, Hezner, Mulcrone, Heidner

NAYS: 0 – None

ABSENT AND NOT VOTING: 1 – Morris

Motion carried.

Attendance Roll Call: Commissioners Cotton, Hezner, Mulcrone, and Heidner. Chairman Morris gave prior notice that he would not be in attendance. A quorum was established.

Also attending: Andrew Jennings, Director of Community Development, Village Attorney, Jim Ferolo and Recording Secretary Heavrin.

II. Public Hearing

Chairman Pro-Tem Heidner called for the opening of the public hearing.

Commissioner Hezner made a motion to adopt the Rules and Procedures for Land Use Public Hearings before the Planning and Zoning Commission, second by Commissioner Cotton.

Roll call vote:

AYES: 4 – Cotton, Hezner, Mulcrone, Heidner

NAYS: 0 – None

ABSENT AND NOT VOTING: 1 – Morris

Motion was adopted.

1. **Case #2022-013** is a petition filed by Neil R. Hoffner, dba Wynn-Hoff Air, Inc., contract lessee, requesting approval of a Special Use Permit to allow for a “Children’s Recreation Facility” and “Amusement, Recreation or Training Facility for Adults” known as Urban Air Adventure Park, at the location commonly known as 413 N. Milwaukee Avenue Unit 200, in accordance with Appendix C, Zoning, of the Village of Vernon Hills Code of Ordinances, Article 13, Section 13.3, Article 18, Article 21, Section 21.6

ALL PERSONS PROVIDING TESTIMONY WERE SWORN IN

Neil R. Hoffner, dba Wynn-Hoff Air, Inc. as Urban Air

Adam Stein, Logic Design & Architecture, Corporate Architect for Urban Air
Dean Siampos, Marketplace at Vernon Hills property manager

PUBLIC NOTICE

DCD Jennings stated public notices were sent out November 14, 2022 in the Daily Herald, to the surrounding properties and management. No responses or objections were received.

Mr. Hoffner provided an introduction to the proposed business. The petitioner showed a map of their local franchises around the Chicagoland area, while explaining the differences of an Urban Air 2.0 location verses a 2.5 location is a larger feature such as go-karts or skydiving.

He explained Urban Air day passes, memberships, food and alcohol offerings, hours of operations, special events and promotions, and in-house promotions that focus to the local community where they are located. The petitioner spoke of how Urban Air balances out walk-ins and crowds with time allotments and wristbands.

In response to a question regarding go-kart safety, general safety, and staff coverage by Chairman Pro Tem Heidner, Mr. Hoffner said management does continuous safety walk-throughs, sends “zen” work tickets that are trackable and must show completion and documentation. Urban Air also uses a third party for additional inspections, as required or needed. Mr. Hoffner stated that the go-karts are all electric and located on multi-levels, where employees and management monitor on all levels. With the remote control, Urban Air has the option to freeze the karts to prevent accidents, and the operator controls the go-kart speed. Urban Air provides mandatory, safety seat harnesses in each kart.

In terms of general safety, Mr. Hoffer explained the ratios and how reductions in staff are determined with keeping safety as a priority.

Commissioner Hezner was concerned about party room occupancies. Mr. Stein said they use coil head movable doors that assists in splitting or opening rooms to keep with occupancy requirements.

Commissioner Mulcrone inquired about the shared parking plans and if an overload in customers would impact other businesses nearby. DCD Jennings noted that the total field exceeded the sum of the parking requirements, even taking into account the parking required for Urban Air. He noted that the property manager was present and could provide additional detail.

Mr. Dean Siampos spoke on behalf of the landlord. He stated they are in discussions with the other tenants about shared parking lots, but do not have the written agreement at this time. Commissioner Hezner asked if the building management has or would be investing in property improvements. Mr. Siampos noted that they have made several investments in the parking lot and drive aisles, and some façade work has been completed. He noted additional investment is planned.

THE HEARING WAS OPENED FOR PUBLIC COMMENT

Attorney Lenny Asaro of Faegre Drinker Biddle & Reath LLP, representing Sky Zone at 701 Milwaukee in Vernon Hills, was present and sworn in.

Attorney Asaro said he was there to oppose the approval of the special use permit due to the closeness in distance of the two locations, Sky Zone and Urban Air. He explained the overlap of similarities with Sky Zone and Urban Air. Commissioner Hezner asked if Sky Zone has copyrights on the attractions, and Attorney Asaro stated that he was not aware if they are any copyright issues.

Attorney Asaro stated that the application contains two special uses and asked the petitioner if he submitted a project narrative in support of this application. If so, he would ask if the narrative referred to a restaurant serving food and alcohol. Mr. Hoffner confirmed the narrative referred to food and alcohol.

Attorney Asaro referenced Section 13.319 of the Zoning Ordinance that states the sale of alcoholic beverages is listed as a special use. He noted that he had reviewed the application and did not find that it included this as a special use for the Vernon Hills facility. He asked the petitioner if they own and operate the Mokena and any other Illinois locations. The petitioner responded that he did not.

Attorney Asaro asked what the minimum parking space requirements were for this space and Mr. Hoffner stated it was four parking spaces for every 1000 square feet. Attorney Asaro referred to Section 19.7.14, noting that it states all other permitted or special uses necessitate one space per 200 sq ft of gross floor area. Attorney Asaro asked the petitioner the gross floor area of the proposed special use. Mr. Stain stated it was 66,632 gross square feet.

Attorney Asaro asked the basis of that calculation, and Mr. Stein said it was gross square footage of the entire facility, based on field measurements. In response to a question from Attorney Asaro, Mr. Stein stated that parking requirement according to the staff report states that the sum of the uses requires 806 spaces and 840-862 stalls are provided. Attorney Asaro asked if the staff report cites the section of the Zoning Ordinance that was the basis of the parking calculation. The petitioner redirected Attorney Asaro to ask staff. DCD Jennings noted that he not yet provided testimony. Attorney Ferolo agreed and informed Attorney Asaro that he will have a chance to inquire to staff.

Attorney Asaro asked Urban Air if Sky Zone is their competition. Mr. Hoffner stated it would be viewed as a competitor but he did not feel it was a direct overlap. Attorney Asaro asked why they selected this location, and Mr. Hoffner replied that was one of two that they identified that provided an existing building with adequate square footage and parking. They were not able to come to terms on the other location.

Attorney Asaro asked whether Urban Air provided the petitioner guidance as to the distance to competition. Mr. Hoffner stated that he was not provided guidance.

Mr. Asaro presented several exhibits (Exhibits 9, 10, 11), and stated that they demonstrated the similarity in the activities offered at Sky Zone Vernon Hills, Urban Air Mokena, and Urban Air Bloomingdale.

In response to a question from Attorney Asaro, Mr. Stein detailed the differences of the two entities, Urban Air and Sky Zone. He noted there is overlap on trampolines, and Urban Air is not concerned about the competition based on Urban Air's supplementary offerings.

Attorney Ferolo noted that the purpose of the Planning and Zoning Commission does not include making decisions on competition issues, but to determine if criteria is being met for a specific location and the special use request of that location. Attorney Asaro referred to Section 18.1, the purpose of a Special Use. Attorney Ferolo stated that the market that regulates competition and limiting competition is not the domain of the Planning and Zoning Commission. The Commission's focus should remain on zoning related issues. Attorney Asaro understood and clarified that his objective was to create a complete record for the hearing on the petition. He referred to then Section 18.3.2, Standards for a Special Use.

Attorney Asaro asked if Urban Air consulted with anyone, such as a real estate appraiser, on property valuation impact. The petitioner asked for a further explanation of his inquiry and Attorney Asaro asked whether Urban Air consulted with a real estate broker to help determine whether the business would affect property values within the adjacent neighborhood. Mr. Siampas indicated that he was a real estate broker. He stated that the management required approval from each business surrounding the unit but did not discuss property values. Attorney Asaro asked if they developed a specific opinion of any impact to neighborhood property values and Mr. Siampas indicated that they did not.

Attorney Asaro referenced a form DCD Atkinson's FOIA email (Exhibit 3) regarding the business conversion calculation. He read Section 18.3.6 of the Zoning Code and referred to the Zoning Map (Exhibit 1). He noted the location was zoned B-1 and in the core retail overlay, and stated that according to Section 13.1, Section 4.14 (Building Use Conversion Certificate) would now apply. Following a comment by Chair Pro Tem Heidner, Attorney Asaro asked whether the section was still in effect. DCD Jennings and Attorney Ferolo stated the section referenced in the email response from former DCD Atkinson is still in effect.

Attorney Asaro read from Exhibit 3 (email from Mr. Atkinson) regarding the percentage of retail sales establishments (RSE's) to non-RSE's and made the comparison to the square footages listed in an appraisal report that he found through the County assessor's website (Exhibit 2). Attorney Asaro said the staff email suggests Home Depot is part of the property while the appraisal does not.

He explained the ownership was not the same by presenting Exhibits 4, 5, 7 and 8 (identified for the record as printouts for each PIN from the assessor's website), and further discussed form DCD Atkinson's calculations. He noted that the various exhibits show that staff's calculations incorrectly included Home Depot. He concluded that the petition does not comply with the code, and therefore the petition does not address Standard 18.3.6.

Attorney Asaro stated that documents he was provided in response to FOIA do not contain dimensions of the attractions, square footage or a legend. Attorney Asaro asked Urban Air if the petition included a variation request, and if so, what it was for. Mr. Hoffner confirmed that they needed a 370' variation. DCD Jennings interjected to explain that a "370' variance" is terminology that refers to obtaining the list of properties within 250', excluding roads, from the assessor. A petitioner would not be familiar with the terminology.

Attorney Asaro submitted Exhibit 6, an article from the Lake County Gazette. He stated that it referred to security concerns at an Urban Air location.

Attorney Asaro said he had no other evidence to introduce but he did not know if he had obtained all of the petitioner's evidence that would be considered part of the record. He requested copies of any documents that the Commission would be analyzing to construct their recommendation.

Chairman Hezner made a motion to include Attorney Asaro's Exhibits 1-11 into the record, second by Commissioner Mulcrone. The motion was approved by a voice vote.

Chairman Pro Tem Heidner made a motion for a five-minute recess, second by Commissioner Hezner. The motion was approved by a voice vote. The Commission went into recess.

Chairman Pro Tem Heidner called the meeting to order. He noted that the next item on the order in the adopted rules was a rebuttal to the questions by the objecting party. In rebuttal, Mr. Hoffner stated that a lot of emphasis had been placed on competition and he would like to keep the conversation focused on the special use permit.

DCD Jennings was sworn in to provide Village staff testimony. DCD Jennings reviewed the items included in the staff report. DCD Jennings recommended to include a reference for the need of a Building Conversation Certificate in any motion to be considered. While it is not the Commission's purview, it is a requirement that the Board must consider with the Committee of the Whole report. He referred to the staff recommendation section, which noted a Liquor License would be needed. He also noted that there is a condition of approval suggested that references the required review by the Lake County Public Works and Health Departments.

In response to a question from Attorney Asaro, DCD Jennings confirmed based on his analysis that Home Depot is on a separate parcel with no common ownership. Without a common owner he use conversion certificate is required.

Attorney Asaro asked for copies of the staff report and was provided a copy. Attorney Asaro asked if anything in the Zoning Ordinance regarding parking requirements allows for a reliance on the original PUD. DCD Jennings responded that the PUD applies. Attorney Asaro confirmed to DCD Jennings the maximum non-retail space for the location is 20% of the total floor area and DCD Jennings agreed. Attorney Asaro and DCD Jennings agreed to the 191,418 square feet

total leasable area. Attorney Asaro requested the maximum non RSE square footage, and DCD Jennings noted that he calculated it as a percentage, with 32% exceeding the 20% threshold.

In response to a question from Attorney Asaro, DCD Jennings confirmed that a conversion certificate would be required based on this calculation. Attorney Asaro asked if a special use was required because of the usage with regards to a training facility for adults and recreational use for children. DCD Jennings responded yes. Attorney Asaro asked for confirmation of special uses and wanted to know if the staff report references alcohol in the restaurant / café plans. DCD Jennings responded that the materials submitted do include references to alcohol, and indicated that the references in the staff report were in the Description of Proposal and the Staff review sections. He stated that Urban Air would have to get a liquor license, but they have not applied for that special use specific to alcohol service at this time. Attorney Asaro requested confirmation as to whether a specific special use was required, and referred to the list of special uses in the B-1 district. DCD Jennings stated that he was not offering an opinion one way or the other. Attorney Asaro concluded his questions regarding Staff testimony.

DCD Jennings referenced a longer narrative document that was not attached to the report. The report notes it is available upon request. Attorney Ferolo indicated that the additional document should be included in the record.

In rebuttal to questions on staff testimony by the objecting party, DCD Jennings addressed the Commission regarding special use requirements for alcohol service. He noted that there are locations that are pre-approved for alcohol service so that tenants do not need to obtain individual special uses. At this time he does not know if an additional special use should have been published but he will be looking into if the Marketplace / Rivertree area allows preapproval for alcohol uses.

Attorney Ferolo noted that there was a lot for the Commission to deliberate, and that several items had been left open. He suggested that if a motion to continue would be considered then the Commission should discuss the purpose of a continuance.

Commissioner Mulcrone stated that he thought several items would be needed to help show the petition met the standards. Those items requested were a site plan, a parking plan, a traffic study, a proposed exterior elevation of the building with signage graphics, and documentation that the adjoining tenants in the building are agreeing to the shared parking. He also thought the discrepancies in square footage should be cleaned up so all the numbers match from document to document as well as with the Village's. Commissioner Hezner agreed with all items except the traffic study. He feels a parking study is needed but not a traffic study for this particular parking lot.

DCD Jennings reviewed the items that will be needed for the next meeting. He stated that alcohol service research would be done by staff but the petitioner and property manager would provide the others. In order to decide on an appropriate date for the continued hearing, DCD Jennings explained the nature of the petition that is already scheduled for a hearing on December 14th. The Commission agreed that it seemed reasonable to hear both items.

Chairman Pro-Tem Heidner made a motion to continue the public hearing on December 14, 2022, at 7:30 PM, second by Commissioner Cotton.

Roll call vote:

AYES: 4 – Cotton, Hezner, Mulcrone, Heidner

NAYS: 0 – None

ABSENT AND NOT VOTING: 1 – Morris

Motion carried.

III. Approval of the November 16, 2022 Planning & Zoning Commission minutes

Chairman Pro-Tem Heidner motioned, second by Commissioner Cotton to approve the minutes, as corrected, for the November 16, 2022 Planning & Zoning meeting.

All in favor vote.

Motion was unanimously approved.

IV. Development Review

DCD Jennings noted that the next meeting would involve Chick-Fil-A and setback variation approvals for canopies in their drive through lanes. He suggested for the meeting schedule for 2023 to go with the status quo option where the Commission would state the schedule as every Wednesday. On the back end staff would have to go through the motions by providing a notice for every cancellation. He said this would not affect the Commission but it would be an extra step to make to comply with the Open Meetings Act. Commissioner Hezner asked whether Staff's suggestion was to have a regular schedule of 1 or 2 meetings to be held each month. DCD Jennings said his original goal to talk about both of the options but at this time to continue operating as needed but phrase it in a way that it still complies with the Open Meetings Act.

V. General Public Comments

There were no comments.

VI. Adjournment

With no further items on the agenda, Chairman Pro-Tem Heidner motioned, second by Commissioner Hezner, to adjourn the meeting.

All in favor vote.

Motion was unanimously approved.

The meeting adjourned at 10:19 PM.


Respectfully submitted,

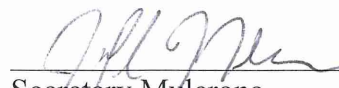
Andrew Jennings
Director of Community Development

Distribution:
President and Board of Trustees
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Approval Date

12-14-22


Chairman Pro-Tem Heidner


Secretary Mulcrone