

TUESDAY, JANUARY 29, 2019
THE AD HOC COMMITTEE ON ADULT BUSINESS USE
STATEMENT OF PAUL HOSS
PLANNING AND ZONING COORDINATOR
DEPARTMENT OF BUILDING AND ZONING DUPAGE COUNTY

Good Afternoon. My name is Paul Hoss and I am the Planning and Zoning Administration Coordinator for the DuPage County Building and Zoning Department. I have worked for the County for 27 years in various planning and zoning capacities.

I have been involved in various aspects of planning and zoning regulation and code enforcement including interpreting, enforcing and amending the County Zoning Ordinance. In addition, I have been involved in various enforcement actions before the County Adjudication Hearing Officer Program, Circuit Court and Federal Court.

I am here today to talk about my experience in the County's regulation and code enforcement efforts with respect to land use in general and specifically, adult business uses and next steps in this deliberative process.

I have found in my years working here that typically people don't wake up in the morning and say, "Hey I own a piece of property, I think I will call my local zoning person and see what I can do today with my property".

On the contrary, most people wake and believe, intuitively that they can do what they want with their property as they have both property rights and constitutional rights.

Nowhere is this idea of using ones property more pronounced than with Adult Business Uses, where property and 1st amendment rights combined provide a proprietor of an adult business with the ability to start up a business and see where it takes them.

In many instances the government finds out about land use issues through a complaint or a manifestation of the use through an issue such noise, lights, signage, or even a robbery or assault or more serious activity.

A. SO HOW DOES THE GOVERNMENT COMBAT THESE ISSUES? ("Compelling government interest"):

Well the County has the authority to regulate land use through its zoning powers. Generally, a government's exercise of its zoning powers is valid when the zoning regulation serves a, "... **rational and compelling government interest**", and provided that the regulation does not deprive the owner of economic use of their property.

This zoning authority is generally limited to land use considerations including location and distance of land use. That includes placing like uses with similar attributes in zones- such as residential, commercial, office and industrial zoning districts.

In addition, zoning regulations are established to create distance, (setbacks) even between like uses to ameliorate impacts that are real or even perceived.

The declaration of the County's, "government interest" is established in the preamble to the County Zoning Ordinance as a means of promoting the, "... health, safety, morals, and general welfare of the community..." and further to ensure that property values are maintained.

While we use zoning regulation relative to Adult Business Land use, we also recognize that when developing regulations for Adult Business Uses we need to be cognizant of its protected rights of speech and particularly expression of the 1st Amendment.

This important constitutional protection often constrains our ability to regulate Adult Business Uses as it places a greater responsibility for us to more closely evaluate the operations of the Adult Business Use.

In addition, we need to be mindful to not create regulations that even unintentionally give the appearance of abridging 1ST Amendment Rights.

B. SO HOW DO WE DO THIS? ("Secondary Effects"):

Governments are permitted to perform a review which includes an evaluation of the, "**secondary effects**" of a use.

This standard of review permits a government to create regulations which seek to curb the adverse secondary effects of the use and not the use itself.

More directly put, the County Zoning definition of an adult business uses describes an adult business use as:

"... one in which a significant or substantial portion of the use involves an activity distinguished or characterized by its emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas..."

In short, the law has to allow a business use where nudity is present or paraphernalia depicting nudity or sexual explicit activity is sold or displayed.

In the early 2000's the County was confronted with the need to better regulate Adult Business Uses, as we had several ABU that opened up in the late 1990's following a push by Cook County to further regulate ABU in its jurisdiction and those ABU necessarily pushed west into DuPage County.

In the late 90's and early 2000's, the County had approximately 11 or 12 different types of adult business uses including strip clubs, spas and massage parlors and book stores.

Most notably, the County found itself defending a Federal Lawsuit called the Palmetto Property case, for a prospective adult business, "Diamonds Gentlemen's Club" on North Ave.

As part of the litigation the Court found the County Zoning Ordinance unconstitutional for a short time. The County then proceeded to amend its Zoning Code using a similar process we have laid out in the current proceedings.

As a result of the zoning changes, the County has successfully reduced the number of adult business uses to one (1) legal adult business use in the unincorporated jurisdiction, the Zebulon Book Store, located on Lake Street which is operating by Federal Court order from 1986.

We were able to develop zoning regulations to combat the secondary impacts of adult business uses by regulating:

1. The location of the ABU to Industrial Zoning Districts only;
2. The distance an ABU can be from another adult business use of 1,000 feet;
3. The distance an ABU can be from uses and areas where children are typically present such as school, daycares, religious institutions and recreational facilities including Forest Preserves, etc.

However, even with these new regulations on land use we find that, generally, zoning regulations do not specifically address **operational aspects of land use**. As such, we have reached an impasse and find ourselves searching for additional regulatory tools to address our, "compelling government interest" obligation to protect health, safety, welfare and property values.

We find that operators of adult business uses continue to change their business practices and operations beyond the reach of typical land use considerations and zoning regulations.

C. WHAT TO DO AND NEXT STEPS? ("Comprehensive Adult Business Regulatory Program"):

As such, we come to this committee ready to provide evidence and testimony that will support a new **Comprehensive Adult Business Regulatory Program** that includes building and zoning regulation, liquor control regulation and licensing.

Over the next several weeks we intend to create a detailed record which will support the need to develop this new **Comprehensive Regulatory Program** and we will present to you unbiased and neutral evidence and testimony from expert witness detailing the adverse secondary effects of adult business uses on the general public and on operators, patrons and employees of adult business uses.

1. We will provide you with case studies from other jurisdictions in the United States that have similar demographic to DuPage County and where we have determined their experiences are reasonably similar to that experienced situation in DuPage County, which will support our proposals to mitigate the secondary adverse impacts of adult business use operations.
2. We will provide testimony from the Law Enforcement Agencies relative to the activity related to crime at and near adult business uses including assault and battery, theft, robbery and prostitution associated with operators, patrons and employees of Adult Business Uses operations.
3. We will provide you with testimony and evidence from advocacy groups relative to human trafficking and its relationship with Adult Business Use operations.
4. We will provide you with testimony and evidence from the Health Department relative to the issues related to communicable diseases associated with Adult Business Uses operations.
5. We will provide you with testimony from education representatives and the representatives from the child care industry documenting their issues relative to Adult Business Uses operations.
6. We will provide you with evidence and testimony from the real estate industry relative to the impacts of Adult Business Use operations on property values, rental rates, and “time on market” concerns.
7. And finally we will provide you with evidence and testimony from experts in the area of regulatory programs including licensing for Adult Business Uses operations.