



LEGAL DIVISION
(217) 384-2464
FAX: (217) 384-2460

JAMES GITZ
City Attorney

JACK WAALER
Special Counsel
jwaaler@city.urbana.il.us

Memorandum

DATE: January 5, 2006
TO: Mayor Prussing and the Urbana City Council
FROM: James Gitz
RE: Reconsideration of Ordinances 2005-12-174 and 175

The Agenda will have a reconsideration of the above ordinances concerning the variances for the Howard Wakeland project (again!). The purpose of this memo is to provide a concise overview of the issue and the procedure to be used.

Some questions were raised about the validity of the Council's action at its December 19, 2005 meeting, in not only reconsidering the prior rejection of these ordinances, but approving them without a specific listing on the Agenda. The safest course of action is reconsideration and reapproval of the Council's December 19, 2005 actions.

Reconsideration will take place in two steps. First, the Council will reconsider the passage vote of both ordinances. In effect, this step will undo the approval of the ordinances, but not the reconsideration of the prior rejection. Assuming the reconsideration motions pass, then both ordinances will come before the Council for formal approval.

The reconsideration motions should be made by 1 of the 5 Council persons present at the December 19, 2005 meeting since it is a legal requirement that reconsideration be made by a member who voted on the prevailing side. In this case, all 5 Council members present voted to approve the ordinances.

The reconsideration motion should be made in substantially the following form: "I move to reconsider the vote by which Ordinance 2005-12-174 was approved at the December 19, 2005 meeting." The same basic motion should be separately made and voted upon for Ordinance 2005-12-175. The motion to reconsider requires a majority of the Council for approval. The motion for reconsideration is debatable.

Assuming the reconsideration vote is successful, the Council will then move to the approval stage of both ordinances. A majority vote will be required, just as if the ordinances were coming before the Council for the first time. The motion for approval will be in the same form as any ordinance or resolution, i.e., "I move that Ordinance _____ be approved."

The reconsideration is taking place at a special meeting of the City Council. According to Section 3.1-40-55 of the Illinois Municipal Code, "No vote of the city council shall be reconsidered or rescinded at a special meeting unless there are present at the special meeting at least as many aldermen as were present when the vote was taken." Since the January 9, 2006, special meeting is expected to have 5 members of the Council present, this section should pose no problem. In addition, 2 members of the Council will be present telephonically.

There is no formal statute on teleconferenced voting, nor does the City Code have a formal provision. However, there is case law upholding the use of teleconferencing for the purposes of participation, discussion and voting. Accordingly, there is legal precedent for Council members to participate in the meeting through teleconferencing.

For those of you pondering the reason for the successive reconsiderations, it is to remove any doubt of legitimacy for the actions taken at the December 19, 2005 meeting. The press, in particular, has raised Open Meetings Act objections, since the passage vote on the ordinances was not listed on the Agenda. This stems from a court decision commonly referred to as Rice v. Adams County, an Appellate decision a couple of years ago. There are various ways to read Rice, and a legitimate question whether it even applies to reconsideration since these items have previously come before the Council on a published agenda and a passage vote. However, taking this additional step resolves that question and upholds the validity of any action ultimately taken.