

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: January 30, 2017

MEMORANDUM

TO: Common Council Organization Committee

FROM: Michael P. May
City Attorney

RE: Robert's Rules, Reconsideration and Real Estate Development

The CCOC asked our office to look at some way to mitigate the problem that arose recently in approval of a real estate development. The situation was last fall. The Council approved a development with some odd procedural issues. There was an original denial and then an approval by the Plan Commission. A protest petition had been filed, but it was not adequate. Alder Kemble was absent and wanted to move for reconsideration, but the developer had removed some conditions and entered into other agreements in the interim. Under Robert's Rules, such actions constitute a sufficient change in position so that reconsideration is not in order.

I met with staff from the Planning Department to discuss possible remedies. I would oppose a general rule that eliminated the "change in position" rule from Robert's Rules on reconsideration. Neither our office nor the Planning staff support a rule that all developments are not finally approved until the next council meeting so that reconsideration can be pursued. Planning staff also do not want to further extend what is a long approval process, with much time and opportunity for input from city residents.

We also were concerned about establishing some new procedure to deal with what may be a one-off incident. The potential for unintended consequences seems very real.

We recommend that the Council deal with the potential problem using existing procedures. If a member of the Council has a concern about a development, the alder could move referral to the next meeting. The alder (assuming the alder voted with the winning side or changed a vote to be on the winning side) could also move reconsideration at the meeting the development was first approved, and then refer the motion to reconsider to a later meeting. If an alder is to be absent, they may wish to let another member of the Council know of any concerns about the development, and ask for referral to a later meeting. Or an alder could on his or her own seek referral due the absence of a key member of the body.

All of these options provide the Council with ways to delay final approval, such that any change in position will not oust the Council of jurisdiction. Perhaps some further

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training of alders on use of these existing procedures would help address the problem. In this manner, we will put the Council in position to obtain the remedy desired, without doing unintended harm to the process.

I have asked Ms. Erdman and Ms. Stouder to be available at the CCOC meeting of February 7 to provide their input on this question.

CC: Natalie Erdman
Heather Stouder