



**PLANNING COMMISSION MEETING**  
**November 12, 2012**  
**Meeting Minutes**

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November 12, 2012 – 6:30 p.m.

Commissioners present: Belt, Blaser, Britton, Culver, Hird, Josserand, Lamer, Liese, von Achen

Staff present: McCullough, Stogsdill, Corliss, Larkin, M. Miller, Ewert

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**COMMITTEE REPORTS**

Receive reports from any committees that met over the past month.

Commissioner Hird said the Agritourism Committee did not meet but that the text amendment would be on the County Commission agenda soon.

**EX PARTE / ABSTENTIONS / DEFERRAL REQUEST**

- Ex parte:

Commissioner von Achen said she received a phone call from Ms. Jane Eldredge regarding last month's meeting.

Commissioner Culver said he had two discussions with Ms. Eldredge regarding last month's meeting as well.

Commissioners Blaser said he received a phone call from Ms. Eldredge today regarding last month's meeting.

Commissioner Lamer said he received a voicemail from Ms. Eldredge.

Commissioner Britton said he spoke with Ms. Eldredge in person regarding last month's meeting.

Commissioner Hird said he received a phone call from Ms. Eldredge today regarding the rezoning on the west side of K-10, not regarding the agenda items this evening.

Commissioner Liese said he received a phone call from Ms. Eldredge as well as written communication. He stated Ms. Eldredge asked that Planning Commission call a special meeting. He said he consulted with the Planning Director and Staff Attorney for advice. He said he asked staff to continue the communication with Ms. Eldredge because they were in a much better position to speak for Planning Commission regarding legal matters.

Mr. McCullough said staff responded to Ms. Eldredge's request for a special meeting to reconsider the CC600 items from the October Planning Commission agenda. He said staff responded with several reasons, with legal basis, that a special meeting would not be called by the Chair.

- Abstentions:

Commissioner Hird said he would abstain from Items 2A and 2B.

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**MISC NO. 3 DISCUSSION REGARDING RECONSIDERATION OF CC600 ITEMS CPA-4-2-12, TA-4-3-12, Z-4-5-12 FROM OCTOBER PLANNING COMMISSION AGENDA**

Commissioner Liese said Commissioner Culver called him this afternoon with some questions that he didn't have the answers to so he looked at the By-Laws and found that some of his questions might be more appropriate as an agenda item. He said according to their By-Laws it would fall under a miscellaneous item and that it could be proposed and voted on as long as a majority of Planning Commission agreed to hear the item.

Commissioner Culver said his discussions with Commissioner Liese and Ms. Jane Eldredge were regarding the two recommendations of the October 24, 2012 Planning Commission meeting for denial of the W of K-10 Plan, specific to the nodal plan at W 6<sup>th</sup> St & K-10 and the rezoning request for CC600. He said his questions were based on what the current options to reconsider/rescind/amend a recommendation before it was acted upon by the governing bodies.

Commissioner Liese asked if his agenda item would be a question of Planning Commission, staff, and the staff attorney.

Commissioner Culver said that was correct.

Commissioner Liese clarified they would not be rehearing the items, it was simply an opportunity to get questions answered in this forum. He said they would not be voting on anything, it would just consist of questions and discussion.

Commissioner Hird asked if the motion was to place the issue on the agenda under miscellaneous for discussion tonight.

Commissioner Liese said that was correct.

Commissioner Hird asked if from that discussion further motions might be made.

Commissioner Liese said that was correct.

Commissioner Liese asked Commissioner Hird about abstaining from Item 2 on tonight's agenda and if it would be necessary for him to abstain from this discussion.

Commissioner Hird said it was his understanding that the consideration of the CC600 zoning was on the west side of K-10 and he abstained during the September Planning Commission meeting because his law firm represented a client on the west side of K-10. He said he no longer had a conflict and did not have a problem participating in the discussion and any possible actions for matters on the west side of K-10. He said regarding the east side of K-10 he still had a conflict that he would need to recuse himself.

Commissioner Liese said they could put the item at the end of the agenda.

Motioned by Commissioner Culver, seconded by Commissioner von Achen, to add a miscellaneous item at the end of the agenda.

Motion carried 8-1, with Commissioner Belt voting in opposition.

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**ITEM NO. 2A ANNEXATION OF 110 ACRES; E OF K-10 & N OF W 6<sup>TH</sup> ST (MKM)**

**A-12-00190:** Consider a request to annex two parcels of approximately 110 acres (90 and 20 acres individually), located east of Kansas Highway 10 (K-10) and north of W 6<sup>th</sup> Street adjacent to the Baldwin Creek City Park, generally bounded by E 902 Rd on the west and George Williams Way extended on the east. Submitted by Paul Werner Architects, for Fairway, LC, Property owner of record.

**ITEM NO. 2B A TO GPI; 110 ACRES; E OF K-10 & N OF W 6<sup>TH</sup> ST (MKM)**

**Z-12-00191:** Consider a request to rezone approximately 110 acres, from County A (Agricultural) District to GPI (General Public and Institutional Uses) District, located east of Kansas Highway 10 (K-10) and north of W 6<sup>th</sup> Street adjacent to the Baldwin Creek City Park, generally bounded by E 902 Rd on the west and George Williams Way extended on the east. Submitted by Paul Werner Architects, for Fairway, LC, Property owner of record.

*Commissioner Hird recused himself.*

**STAFF PRESENTATION**

Ms. Mary Miller presented items 2A and 2B together.

Commissioner Liese asked staff to comment on the letter from Mr. Rick Hird that states his client does not want the project turned into an entertainment venue instead of a sports village for the community.

Ms. Miller said the use category was Entertainment, Sports, and Recreation which covers all of them so to specify one of those uses would be difficult. She said it could be done at the Special Use Permit level.

Mr. McCullough said the amphitheatre fit into the definition of entertainment use. He said the time to debate whether that should be part of the master plan or Special Use Permit was really at the Special Use Permit level. He said the discussion should be about what uses were appropriate and that the further level of detail review would occur during the Special Use Permit process.

Ms. Miller showed the floodplain area along the stream corridor on the overhead. She said the League of Women Voter letter expressed concern with the floodplain and drainage.

Commissioner Josserand asked staff about the previous plan for the recreational facility on the west side of K-10. He asked if they knew anything more and if they were annexing land not knowing what would happen.

Mr. McCullough said the issues were separate. He said when staff reviews and considers a request to annex property they look at adjacency to city boundaries and how easily it could be served. He said they look at the intended use but that uses and zoning can change. He said they had two separate agenda items, annexation and rezoning. He said the services, such as sewer, water, and streets were right at the property. He said they would see more details of the plan next month.

Commissioner Josserand asked if they considered the same issue in May for a different piece of property.

Mr. McCullough said they did not always have the intended use of an annexation before the request. He said sometimes the property owner wants to be annexed into the city as the first step to development. He said development was a little linear in its process. He said if there was a need for urban services than annexation was the first step. He said there may not be a known user.

Commissioner Josserand asked if the previous annexation they heard was related to the new recreation center.

Mr. McCullough said yes, in that specific case.

Commissioner Liese asked about the applicant for annexation.

Mr. McCullough said this application for annexation was submitted by the current property owner. He said the City was not the applicant but was in some level of partnership with the University of Kansas Endowment Association in developing the project.

### **APPLICANT PRESENTATION**

Mr. Paul Werner, Paul Werner Architects, said the site was already surrounded by infrastructure and was an easier site than the previous one. He said this was the perfect zoning for this type of project. He agreed with the staff recommendation and looked forward to having Planning Commission support as well. He said he had met with Mr. Jack Graham and planned to continue to do so going forward. He said Mr. Graham's concerns were lighting and the amphitheatre. He said they were working on lighting plans and there would be a lot more information in a month. He said they submitted a drainage study and it was currently being reviewed by City staff. He said the site would provide detention to the city standards. He said technically when this close to a floodplain, detention did not need to be provided but it would be provided to minimize the downstream impact of the impervious surface due to the parking lots. He said the trails on the City property would be more natural and not paved. He said more details would be presented next month when they discussed the site plan for the Special Use Permit.

### **PUBLIC HEARING**

Mr. Thomas Johnson, Petefish, Immel, Heeb, & Hird law firm, representing Mr. Jack Graham, said he did not object to the annexation and that his comments were regarding the rezoning. He said Institutional uses as defined by the Code were not-for-profit, governmental, educational, or cultural and typically operated by government, utility, or tax exempt organizations. He stated while the City would own and operate the recreation center for the City, KU Endowment would own the land on which the University facilities would be built. He said KU Endowment Association had no intention to operate it but instead it would be leased and operated by a private developer, Bliss Sports (Thomas Fritzel). He said the GPI zoning included entertainment uses, which was something never discussed publicly with respect to the development of the property. He said the original site plan included an amphitheatre. He said if the property was rezoned to GPI that it should be conditionally zoned to be used for a sports village project and no other project; exclude the use of the facilities for outdoor entertainment, such as an amphitheatre; exclude the use of outdoor lighting after 11:00pm; and no sale of alcoholic beverages on the property.

Commissioner Josserand said in Greece they had an amphitheatre based around sports.

Mr. Johnson said he could not think of any sports that would take place in an amphitheatre. He said the project had been proposed as a recreation center. He said KU would be turning over the operation to a for-profit private developer.

Commissioner Belt asked if Mr. Johnson was talking about the recreation center, not the KU facilities.

Mr. Johnson said he was talking about all of it, including the KU facilities.

#### **APPLICANT CLOSING COMMENTS**

Mr. Werner said he met with Mr. Graham and knew that the amphitheatre was of concern to him. He pointed on the overhead to the portions that would be owned by the City; the building, tennis courts, and a portion of the parking lot. He said all the other property would be owned by KU Endowment and operated by KU Endowment and KU Athletics. He said they would control what happens on all the ground. He said the hope was that they would allow the City of Lawrence to hold soccer tournaments, but that would be decided by KU Athletics and KU Endowment. He said KU Endowment was the contract purchaser on all the property and if approved they would build a building to sell to the City of Lawrence, so the recreation center building and tennis courts would be on City owned property.

Commissioner Liese asked Mr. Werner to explain the relationship between Bliss Sports and KU Endowment.

Mr. Werner said Bliss Sports was building the complex with KU Endowment.

Commissioner Liese asked if it would be a misconception to think Bliss Sports was doing something totally separate from KU Endowment.

Mr. Werner said it would be inaccurate to think Bliss Sports was running a KU Athletics facility for track & field, soccer, and softball.

Commissioner Josserand asked if the facilities would be administered by KU Athletics.

Mr. Werner said yes.

Commissioner Blaser said the staff report said it would be managed by Bliss Sports.

Mr. Werner said KU Endowment owned this and may hire Bliss Sports to maintain the facilities. He said KU Endowment was the purchaser of the property.

Mr. McCullough said his understanding was the same as Mr. Werner's.

Commissioner Blaser said the letter from the neighbor made the claim about Bliss Sports, not the staff report.

Mr. Werner said to his understanding this was how it would run.

Commissioner von Achen asked what Mr. Fritzel's role would be in the KU part of it.

Mr. Werner said he would oversee the construction and choose sub-contractors to build the facility, in conjunction with KU Athletics and KU Endowment.

Commissioner von Achen asked if Mr. Fritzel's involvement would be finished on the completion of the facility.

Mr. Werner said it was a partnership but that it was a KU athletic sports Olympic village.

Mr. McCullough said the institutional development plan was intended to serve a purpose for this type of project. He stated governmental entities could enter into partnerships with private individuals or businesses to do a number of things. He said it was an evolving relationship and there were many components to developing any project of this scope and magnitude, one of which was the proper zoning, annexation, platting, and Special Use Permit process. He said there was no agreement before them tonight in terms of how the partnership would look like and that they should focus on whether this was an appropriate zoning district and complies with the Comprehensive Plan. He said there were a lot of details about the project being developed for next month's Planning Commission meeting and that many of them were related to the concerns of Mr. Graham. He hoped to continue dialogue with him and others in the neighborhood about how to address their concerns. He felt the concerns were more of a Special Use Permit issue and that the issue he raises are more of an issue of site planning and Special Use Permit conditions. Staff did not think conditional zoning was the right tool for these particular concerns and that it would be very challenging to do through conditional zoning. He said the institutional development plan supported the type of partnership being worked out at the City Commission level and the highest levels of KU Endowment and KU Athletics.

Mr. Werner said he agreed with what Mr. McCullough said.

#### **ACTION TAKEN on Item 2A**

Motioned by Commissioner Blaser, seconded by Commissioner von Achen, to approve the requested annexation of approximately 110 acres located in the northeast quadrant of the intersection of W 6<sup>th</sup> Street/US Hwy 40 and K-10 subject to the following condition:

- *City shall comply with state law requirements in relation to Rural Water District No. 1 pursuant to K.S.A 12-527.*

Approved 8-0-1, with Commissioner Hird abstaining.

Commissioner Liese asked if the Special Use Permit would apply to Entertainment & Spectator Sports General but not Limited.

Mr. McCullough said the Special Use Permit applied to the entire project because of the GPI district and type of facility it was and that it was over 10 acres in size, an institutional development plan was required. He said the vehicle to adopt the master plan for the entire complex was the Special Use Permit process.

Commissioner von Achen said the League of Women Voter letter was requesting that the rezoning be postponed to next month to be heard with the Special Use Permit. She inquired about the advantages and/or disadvantages of doing that.

Mr. McCullough said it would probably not change a great deal in terms of its program. He said the advantage was perhaps the formal application being presented to Planning Commission which could allow them to view it in its complete totality. He said the disadvantage was City Commission was meeting tomorrow night and may be looking for Planning Commission to deliver their first recommendation on the project. He said the real protection was the Special Use Permit versus conditional zoning. He said on the west side it was a case of where it was straight zoning without the Special Use Permit, and was more or less site planning. He said employing the GPI district triggers the Special Use Permit which allows the ability to recommend conditions to mitigate any known impacts through the public hearing process.

**ACTION TAKEN on Item 2B**

Motioned by Commissioner Blaser, seconded by Commissioner Culver, to approve the rezoning request for approximately 110 acres from A (Agricultural) District to GPI (General Public and Institutional Uses) District and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report.

Approved 8-0-1, with Commissioner Hird abstaining.

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## **MISCELLANEOUS NEW OR OLD BUSINESS**

### **MISC NO. 3 DISCUSSION REGARDING RECONSIDERATION OF CC600 ITEMS CPA-4-2-12, TA-4-3-12, Z-4-5-12 FROM OCTOBER PLANNING COMMISSION AGENDA**

*Miscellaneous Item 3 was added at meeting by majority vote of the Planning Commission.*

Commissioner Culver said the purpose of having a miscellaneous item added to the agenda was to gain understanding of options and clarification on the procedures and processes of revisiting a recommendation made specifically at last month's meeting.

Mr. Randy Larkin, staff attorney, said there was no case law or anything specific on this, so conclusions had to be drawn from extrapolating what does exist. He said there were a number of situations, for example, a garden variety of rezoning applications, which sometimes could be reconsidered or rescinded. He said because it was a later meeting they would be talking about rescission as opposed to reconsideration. He said in this instance, because it was returned by City Commission to Planning Commission, it was the City Attorney's opinion that there really wasn't anything that could be done to revisit it. He said originally Planning Commission recommended approval of the rezoning application and that went to City Commission. He said City Commission had three options; approve the recommendation, override the recommendation, or return it to Planning Commission with direction. He said in this situation the City Commission chose to return it to Planning Commission and ask them to reconsider the application, in light of the fact that the sports village would not be appearing on the subject property but across the highway. He said upon a return, under K.S.A. 12-757(d), if Planning Commission failed to deliver a recommendation to the governing body after its next regular meeting then such action was deemed inaction and deemed resubmission of the previous recommendation. He said in compliance with the statute, Planning Commission heard it and made a decision to recommend disapproval of the rezoning application. He said a rescission would be no different than deferral, making the decision at a later time. He said the statute required that the recommendation be delivered to City Commission and that had been done so he did not know that Planning Commission had the authority to now withdraw that recommendation from City Commission. He said it was the opinion of the City Attorney's Office that they did not have the authority to revisit the issue.

Commissioner Blaser asked what options the City Commission now had.

Mr. Larkin said the City Commission had the same options it had originally. He said he did not know if it could be returned to Planning Commission, he had not come to a conclusion regarding that because the statute was empty on it. He said the City Commission could approve or disapprove the recommendation and may be able to return it to Planning Commission for further consideration.

Commissioner von Achen asked how many votes it would take by the City Commission to approve or disapprove the Planning Commission recommendation.

Mr. Larkin said to approve the recommendation it would take a simple majority vote by City Commission. He said to override the recommendation it would take a super majority vote, 4 out of the 5 City Commissioners.

Commissioner Culver asked if it was the City's perspective that nothing could be done at this point by Planning Commission.

Mr. Larkin said yes, it was the opinion of the City Attorney's Office that there was nothing more to be done.

Commissioner Hird said City Commission could send it back to Planning Commission if that was their decision. He asked if they could make a separate motion to request the Planning Director communicate to the City Commission that Planning Commission would like this back to reconsider.

Mr. Larkin said that motion could be made.

Motioned by Commissioner Hird, seconded by Commissioner Culver, to request the Planning Director communicate to City Commission that Planning Commission would like these items back for reconsideration.

Commissioner Hird said he was not here for the last meeting and had not seen the minutes. He felt the cleanest way to do this was to reconsider, if possible.

Commissioner Josserand said it was unfortunate the minutes were not ready. He said he wanted staff to examine the larger issues of the entire intersection, all four quadrants, in light of the significant development opportunity that did not exist when those quadrants were originally planned. He said if they rejected the rezoning request they would not be allowed to approve substantially the same rezoning request within a year. He wanted to talk about the whole quadrant. He said he voted to deny the zoning and was trying to make the same motion last month that Commissioner Hird just made and was told he could not make it.

Commissioner Britton said the time limitation of having to deal with it in one night was frustrating. He said the recreation center moving from one side to the other was a big enough change that he felt like they needed to be able to ask more questions if they were going to move forward with rezoning out there. He said if they could get this back and have the opportunity to have those types of discussions that would be favorable.

Mr. Larkin said if it was returned it would be under the same statute and would be a one night deal.

Commissioner Britton asked if staff had the capability to do additional analysis in light of the change of the recreation centers location and give an actual recommendation. He said there was no recommendation last month.

Mr. McCullough said last month staff was acting under the direction of City Commission to return it to Planning Commission for discussion. He said staff could certainly dig deeper and provide further analysis. He said they could put forth any motion to the City Commission. He said staff did not interpret Commissioner Josserand's request last month the same as Commissioner Hird's motion this month.

Commissioner Josserand asked for a broader review of the quadrants.

Commissioner Britton asked if anyone from the public wanted to comment.

#### **PUBLIC COMMENT**

Mr. Mike Kelso said the reason he wanted this reconsidered was due to last month being a late meeting as well as the confusion about what was being voted on. He said it was an important

decision and there wasn't consensus on what was being voted on. He felt it needed to be revoted on and restudied.

Ms. Jane Eldredge, Barber Emerson, said a motion to rescind was designed for situations when less than a full commission acted on an item. She said it had not been delivered to the City Commission yet because the minutes were not complete.

Commissioner Liese asked Ms. Eldredge to comment on the motion.

Ms. Eldredge said she would have to take what she could get.

Commissioner von Achen asked if a motion to rescind could be made by anyone or if it needed to be someone who voted in the majority last month.

Mr. Larkin said a motion to rescind could be made by any member of Planning Commission, regardless of how each member voted last time.

Commissioner Hird withdrew his motion, pending any further motions by any other member of Planning Commission, with the understanding he could reassert his motion if there was nothing in the way of rescission.

Commissioner Culver, who seconded the motion, said he was fine with that.

Motioned by Commissioner von Achen, seconded by Commissioner Culver, to rescind the motion made last month on the comprehensive plan amendment and rezoning on the property on the northwest corner of W 6<sup>th</sup> Street and the South Lawrence Trafficway.

Commissioner Jossierand asked on what basis they were rescinding this.

Mr. Larkin said a motion to rescind, because there was no notice beforehand, would need to be at least 2/3 or one more than a majority of the entire membership of the board, whichever was easier to reach.

Commissioner Jossierand said there were a different set of Commissioners than last month. He said Roberts Rules of Order puts a supermajority on it so that governing bodies don't do this. He wondered why there were doing this and said if he misses a meeting he may show up and ask to reconsider an item.

Commissioner von Achen said the main reason for asking for this was because there were more Commissioners present this month than last month. She felt it would be a fairer decision if more people were acting on it.

Commissioner Lamer said he was unfortunately not able to make last month's meeting. He said he would have a hard time not following the decision made last month, regardless of how he considered the evidence. He concurred with Commissioner Jossierand on the weight given to the Commissioners who were present and considered the evidence.

Commissioner Hird said Mr. Larkin indicated that a motion to rescind was not an appropriate remedy. He asked what the outcome of an improper motion would be.

Mr. Larkin said it would just be void and the original recommendation would move forward.

Commissioner Hird said he had great respect for the Planning Commission. He said the wisest judges and best attorneys he knows are always willing to look at the decisions they have made and make sure they are sound. He said if the majority was correct last month, reconsidering and hearing more information does nothing more than help the process. He said sometimes it was worthwhile to revisit something and this was an important issue for the community. He felt it was a good motion and he would support it.

Commissioner Britton agreed with Commissioner Hird about there being no harm in reopening something and talking about it again. He said if they were right the first time then they'd be right the second time and if they were wrong the first time they'd be right the second time. He said that was all predicated on the idea that there was additional information or reason to believe they would make a better decision or have more evidence to consider. He said he hadn't heard anything about what more they would hear tonight that they couldn't have heard last month. He said if they do not have some anticipation that new information would give them a wider and deeper appreciation for the issues then he was not sure it was appropriate to reopen the issue just to revote on it. He expressed concern about setting a precedent for reopening things just because not everyone was present at a meeting. He did not feel this issue was the kind where they needed to step outside the normal process and potentially undermine it. He felt they should respect the process and respect the fact there was no new information in which to base a new decision. He said he would oppose the motion.

Mr. Larkin said if there was a vote to rescind, assuming it was legal, there would no further vote on the issue, the original recommendation would be deemed submitted. He said if their action from last month was rescinded there would not be a vote on the issue again it would go to the City Commission under the original recommendation.

Commissioner Liese said in both cases, whether there was a motion to have City Commission bring it back to Planning Commission or have it rescinded, they would be letting City Commission know that Planning Commission had concerns about the decision. He felt rescinding it was a potentially negative move.

Commissioner von Achen asked if there would be no further action.

Mr. Larkin said if rescinded it would go to the City Commission as a recommendation of approval. He said the City Commission could act on it and Planning Commission would never see it again or the City Commission also had the ability to return it to Planning Commission. He said either way it would be City Commission's decision.

Commissioner Liese said a more constructive way to start all over would be to ask the City Commission to give it back to Planning Commission to look at again. He said during last month's meeting Planning Commission was asked if circumstances changed would they still vote for it and the answer was yes.

Commissioner Hird suggested a motion to rescind and if that was illegal direct staff to request City Commission send it back to Planning Commission.

Mr. McCullough said if it was legal the impact was the original motion for approval. He said the City Commission would understand the frustration and challenges of the case.

Commissioner Liese said he would like to see a more collaborative motion that they could all agree on because it would be a stronger message to City Commission.

Commissioner Lamer said his statement about opposition to the motion had nothing to do with the merits of the plan put forth. He felt it would be questioning the decision made by the Planning Commissioners who were present last month.

Commissioner von Achen said if they went along with Commissioner Hird's original motion would there be new information that could help move this process along or would it just be a rehash of what they already did.

Mr. McCullough said the direction of that motion was that if the City Commission returned the items that Planning Commission would request staff to provide a deeper analysis. He said there were a number of things that came up in the 5+ hour discussion last month that staff could provide information on.

Commissioner Liese asked if staff could provide information on the draw of downtown when a development occurs.

Mr. McCullough said there was a healthy retail market analysis in the packet but that staff could do what they could to provide any information requested.

Commissioner Jossierand said he thought there was a wider set of concerns than just one quadrant.

Commissioner Belt said if they do move with rescission it would immediately kick back to the original approval. He felt the discussion tonight was more peculiar than last month's discussion and he would not support the motion.

Commissioner Hird said finality at Planning Commission did not exist. He gave the example of the many changes with the Northeast Sector Plan. He said Planning Commission was always revisiting things and it was a continual process of readjusting Horizon 2020 to meet the needs and expectations of the community. He said it was an evolving process that never stops. He felt the motion to reconsider was one of the tools that they had as a Commission. He felt it was an exercise of their responsibility when the situation was right to reconsider items. He said it does not bother or offend him that they would revisit something because that's what the Commission does all the time.

Commissioner Britton said they were not talking about reconsidering they were talking about rescinding. He felt rescinding was very different than reconsidering something with new information. He said there was nothing illegitimate about a motion to rescind. He said the minutes reflected that he specifically asked if there was a possibility the recreation center would not end up going there and what would happen procedurally. He felt it was a material change that deserved additional consideration and evidence. He addressed Mr. Kelso's comments about being frustrated with Planning Commission taking a vote last month. He said Planning Commission was frustrated too about having to vote and would have liked additional time to talk about it. He stated under the rules they had to move on it that night and didn't have a choice. He asked Mr. Larkin about his comments regarding a motion to rescind being improper and would not do anything. He asked if they voted to rescind if it would wipe out the recommendation for denial from last month, which would reinstate their previous approval.

Mr. Larkin said if the motion to rescind was valid then that would be the result. He said it was still the City Attorney's opinion that the motion to rescind was not valid, but there were differing opinions regarding that.

Commissioner Blaser said he would like the chance to hear the items again. He suggested going back to Commissioner Hird's motion about asking the City Commission to send it back to Planning Commission to look at again. He said the motion to rescind was not deemed to be legal so he would vote against the motion to rescind.

Commissioner von Achen withdrew her motion so that Commissioner Hird could reinstate his original motion.

Commissioner Culver, who seconded the motion, said he was fine with that.

Commissioner Hird said he wished they had voted on the motion to rescind because they rarely see rezoning applications where everyone is in agreement and it gets turned down. He said he would have preferred to go back to their original motion.

Motioned by Commissioner Hird, seconded by Commissioner Culver, that the Planning Director submit to the City Commission a request to have the items related to the CC600 issues heard at the October Planning Commission meeting returned to the Planning Commission for reconsideration with more than one meeting to consider the items, if needed. If the City Commission returns the items, the Planning Commission requested deeper analysis by staff on the land use options.

Commissioner Josserand inquired about the year moratorium.

Mr. Larkin said a final determination had not been made by City Commission and it would trigger the one year moratorium.

Commissioner Britton asked if the City Commission would have the authority to give Planning Commission more time to reconsider the items.

Mr. Larkin said as he read the law, probably not, but that Planning Commission could always ask for more time.

Commissioner Culver said he supported both motions because his hope was that the City Commission would send this back to Planning Commission to allow for a more comprehensive representation of Planning Commissioners to have a discussion. He hoped they could come to a better informed recommendation with less frustration and confusion. He said the discussion was important because this could potentially have longer term impacts on the applicant and he wanted to be sure they took a thorough look at how they go about making recommendations.

Commissioner Liese asked Commissioner Culver what gave him the confidence there would be better attendance.

Commissioner Culver said he hoped Planning Commissioners would see the importance of the discussion and would want to serve in the capacity of representing the community and engage in those discussions.

Commissioner Britton said if he thought they would have the opportunity to give this the kind of consideration it deserved he would be inclined to support the motion, but it sounded like they would

be in the same situation with little time to discuss and no option to defer. He said he would probably oppose the motion. He hoped City Commission would take a long hard look at the minutes and do what they felt was best.

Commissioner Hird asked if they could use the Planning Commission December Mid-Month meeting to discuss further.

Mr. McCullough said there was no December Mid-Month meeting because the regular Planning Commission meeting was December 10<sup>th</sup>. He said he was not sure when City Commission would consider this and they would need to take action on it first.

Commissioner Britton said he understood the law to be that if City Commission sent it back that Planning Commission would have to take it up at their next meeting.

Mr. McCullough said that was correct.

Motion carried 5-4. Commissioners Belt, Britton, Josserand, Lamer voted in opposition. Commissioners Blaser, Culver, Hird, Liese, von Achen voted in favor.

