

---

MINUTES OF THE  
DEVELOPMENT REVIEW COMMISSION  
STUDY SESSION  
February 11, 2014

HARRY E. MITCHELL GOVERNMENT CENTER  
TEMPE CITY HALL – CITY COUNCIL CHAMBERS  
31 EAST 5<sup>TH</sup> STREET  
5:30 p.m.

Commission Present:

Dennis Webb, Chair  
Paul Kent, Vice Chair  
Peggy Tinsley  
Kevin O'Melia  
Ron Collett  
Linda Spears  
Dan Killoren

Commission Absent:

Dave Maza  
Trevor Barger  
Angie Thornton

City Staff Present:

Steve Abrahamson, Planning and Zoning Coordinator  
Ryan Levesque, Senior Planner  
Diana Kaminski, Senior Planner  
Sherri Lesser, Senior Planner  
Karen Stovall, Senior Planner  
Teresa Voss, Assistant City Attorney  
Nancy Ryan, Project Management Coordinator  
Steve Nagy, Administrative Asst. II

Chair Webb began the Study Session at 5:30 p.m. He began by introducing the agenda item of procedural overview of taking action by motion of vote which was presented by Diana Kaminski.

Ms. Kaminski then introduced Teresa Voss, City of Tempe Assistant City Attorney. Ms. Voss was present to help answer any question staff may have had on the memo regarding the procedural error that allegedly occurred during the previous Development Review Commission. Ms. Kaminski explained that when the motion to approve Kenneth Place Townhomes failed to pass, there needed to be another motion taken.

Commissioner Tinsley denied that there needed to be another motion taken.

Ms. Kaminski further explained that in other cases, when the first motion fails to pass, a new motion is made. This new motion is a motion either to continue, a motion to deny, a motion to approve with other conditions, etc. and you have a motion until you have an affirmative vote of the majority of the Commission.

Chair Webb then asked where this procedure is stated.

Ms. Kaminski answered that it is stated in Robert's Rules.

Ms. Voss, then clarified that you start with the Zoning Code where the first section that refers to the DRC explains what the duties responsibilities are. This section clarifies that in order for action to be taken on any agenda item, 4 votes are required. Ms. Voss continued that if you fail to get 4 votes, then the motion is lost, and the opposite of the motion cannot be inferred.

Ms. Kaminski added that once the motion is lost, there cannot be a request made for reconsideration and an appeal cannot be made.

Chair Webb then inquired about other cases where items were voted down once, and no other votes were taken on these items.

Ms. Kaminski responded that she recalls cases where there was a move to deny and the motion passed. She also recalls moves to approve that failed to pass and second motions were then taken.

Commissioner Tinsley denied this had ever occurred since her and Chair Webb had been on the Commission.

Vice Chair Kent acknowledged that there had previously been motions to approve, which had been denied, and condition changes had been made before a new motion was made.

Ms. Voss then clarified that a following motion did not have to be in the opposite of the original motion, only that a new motion had to be made until a final decision is made.

Chair Webb then asked if a motion lost 3-4, is that a final motion?

Ms. Voss responded no, that because the motion did not receive 4 votes in the affirmative, the motion is lost, it essentially has died.

Commissioner Tinsley stated that she believes this means that the motion in question is denied, and this has been inferred, implied and intended for the 10 years she has been on the board.

Vice Chair Kent inquired whether or not the Commission wanted to change the way action was taken by motion of vote.

Chair Webb stated that this procedure all news to him, although the Commission does not vote 'no' that often.

Commissioner Tinsley reaffirmed her belief that someone moved to approve a case, and it failed.

Vice Chair Kent inquired as to whether the motion of vote procedure was written different for the DRC than for other Commissions or Council, and if so, how?

Ms. Voss declined to speak on all of the other Boards and Council. She then clarified that the DRC has more duties and responsibilities than other Commissions.

Commissioner Tinsley stated that in this case 4 people concurred to deny.

Ms. Voss replied that that was fine, if the motion was made to deny.

Commissioner Tinsley then replied that Robert's Rules state that you never make a negative motion, you make a positive motion and if it fails, the matter dies.

Ms. Voss agreed that the motion is lost.

Commissioner Tinsley reaffirmed that the matter dies.

Ms. Voss stated that once a motion dies it does not mean a final decision has been made.

Commissioner Tinsley disagreed.

Ms. Voss then clarified that a vote to deny is an affirmative motion, however, a vote that fails to approve is not an affirmative motion.

Commissioner Tinsley again stated her disagreement to Ms. Voss' interpretation.

Ms. Kaminski stated that she believes the term 'affirmative' is causing an issue as the Commission believes the term 'affirmative' needs to be made in a positive statement.

Commissioner Tinsley agreed with this.

Ms. Voss again clarified that if you have a motion to deny, and the motion receives 4 votes, then the motion carries.

Commissioner Tinsley then stated that if a motion to deny had occurred and she was then told that motion in the affirmative needed to follow, she would have agreed to such. Ms. Tinsley acknowledged that the action by motion of vote for Kenneth Place should have taken place differently.

Chair Webb stated that had a vote 3-3 with one abstention had taken place; he could see how no action was taken, but if a vote of 3-4 was taken to approve, then the motion fails.

Commissioner Collett also interpreted the failure of the motion to mean that the motion is denied.

Ms. Kaminski restated that there was not motion made to deny.

Commissioner Collett replied that he does not understand.

Commissioner Tinsley once again stated her disagreement.

Mr. Levesque referred to general examples where stipulations were added with failed motions not resulting in a denial.

Commissioner Tinsley replied that such cases were different than the case being discussed. If a motion is changed, then it is entirely different.

Vice Chair Kent recalled cases where motions to deny were made and the Commission were told by staff that negative motions could not be made.

Chair Webb agreed, and then once again questioned why this discussion was taking place on this particular case.

Vice Chair Kent clarified that if a motion to approve fails, then another motion is needed to deny?

Ms. Voss replied the next motion doesn't necessarily have to be to deny.

Ms. Kaminski added that the next motion could be to continue the case, as an example.

Ms. Voss again clarified that a motion needs to be made until 4 concurring votes in the affirmative are accomplished.

Commissioner Tinsley replied that 'concurring' does not mean 'in favor' but 'in agreement' which the 4 votes in the 'no' accomplished.

Ms. Voss then referred to the language of the motion 'move to approve'. That means 4 votes in favor, the motion passes, 4 votes against, the motion dies, and it fails to carry.

Commissioner Tinsley responded that she made the motion; she knows that the motion said, and knows what the result of the vote of the motion was, which was that the motion was defeated.

Ms. Voss replied that the following motion would have been a motion to deny.

Commissioner Tinsley replied that she would not make such a motion as it is a motion in the negative, and motions are only made in the affirmative.

Commissioner O'Melia then asked about a hypothetical scenario where if someone were to make a motion to deny and that motion receives 3 votes in favor of the denial and 4 votes against the motion to deny, would there automatically have to be a second motion to approve?

Ms. Voss responded that if there was a motion to deny an application, and there were 3 votes for, and 4 vote against, that motion fails. The motion is no longer on the table; it did not receive sufficient votes to pass.

Commissioner Tinsley clarified that this scenario is exactly why the Commission does not have motions to deny, only motions to approve.

Ms. Voss then suggested that since the Commission has the authority to do so, they write by-laws to determine how, procedurally, the Commission would like to handle such situations.

Chair Webb then asked again why the situation is coming up now, when the Commission had been doing things this way for the last 8 years.

Ms. Kaminski felt that after the 01/28/2014 DRC, the case was in limbo, as no action was taken. In response to the applicant's request for advice on how to proceed, Ms. Kaminski determined that the case was not approved, nor denied, as there was not an affirmative motion to deny.

Chair Webb replied that Ms. Kaminski's response did not answer his question.

Ms. Kaminski responded that perhaps the questioning of taking action by motion of vote has come up because of her simply asking a question about it.

Commissioner Tinsley stated that when the Commission denied the Hanover case, the applicant appealed to Council.

Ms. Kaminski replied by saying that was a motion to deny.

Ms. Spears stated that it was in fact a vote to approve, as the Commission does not vote to deny.

Ms. Kaminski apologized that she was not a part of the Hanover project, but that in this case she was trying to find out the best next step for the customer.

Commissioner Tinsley stated that the customer can appeal.

Chair Webb asked whether in the future 2 votes should be taken to deny a case.

Ms. Voss replied that she was unclear on what Chair Webb means by deny something.

Chair Webb clarified that if the Commission does not approve something.

Ms. Voss responded that if a motion fails to carry, if it fails to acquire 4 votes in favor of that motion, the motion is lost.

Chair Webb again asked if the Commission votes something down, then do they need to do make a motion to deny the case that was voted down.

Ms. Kaminski then referred to a case where the motion failed to carry, and 2 more motions needed to be made before action was taken.

Chair Webb reiterated the specifics of the motion's failure for Kenneth Place to which Commissioner Spears confirmed the result of that motion's failure was the intent to deny. Chair Webb confirmed this intent as well.

Commissioner Collett also stated that the motion resulted in a denial, to which Vice Chair Kent responded that what Ms. Voss is trying to say is that it is not a denial, the motion just goes away. Commissioner Collett reiterated that the motion failed to pass, which the applicant can appeal.

Commissioner Tinsley also reiterated that the Commission's decision was that the applicant was not approved and therefore denied.

Commissioner Spears stated that this is not the first time that this has happened since she has been on the Commission, and does not understand why this is different from cases that failed to achieve approval and went on to appeal.

Ms. Voss stated that there are simply other options for the applicant.

Commissioner Tinsley replied that the Commission did not want other options; they only wanted to deny it.

Ms. Voss suggested that the Commission make another motion to specifically deny the case.

Commissioner Collett stated that in legislation action by motion of vote does not work this way.

Ms. Voss clarified that the Commission is making decisions that can be appealed to another authority, passing laws, making legislation is not quite the same thing.

Commissioner Collett disagreed with Ms. Voss and stated a result is a result, and this case did not pass, and the applicant can appeal it.

Ms. Voss responded that the Commission could make some by-laws, however currently, the Commission could make another motion.

Commissioner Collett agreed that the Commission could, however they do not want to.

Ms. Voss advised that it would be helpful to do so in order to achieve a final decision.

The Commission collectively agreed that the decision was clear to them.

Vice Chair Kent inquired as to whether the Council operates in the same manner in terms of approving or denying motions. He also asked whether it is taken into account when the Commission may be short on members present.

Chair Webb re-confirmed that 4 votes are needed for a motion to pass.

Commissioner Tinsley added that the Commission offers a continuance to applicants when there is not a full board.

Commissioner Spears proposed the Commission write a by-law stating that if a motion doesn't receive 4 votes in favor, it is the same as a denial.

Commissioner O'Melia asked if the Commission should vote on a continuance for the case in the meantime.

Chair Webb stated that he did not feel comfortable doing so at that time. He then went on to say that they had already approved a project by the applicant. The applicant came back with another design and it was not approved, and therefore denied.

Ms. Kaminski confirmed that the applicant only changed the design.

Chair Webb expressed the importance of looking at what the intent of the Commission was.

Ms. Voss replied that the point of the rules is to ensure that all actions and decision are very clear.

Chair Webb asked where the case goes from here.

Ms. Kaminski replied that there was a request for a continuance for the case on the agenda.

Discussion that clarified what this request for continuance meant was held. The commission agreed to hear the request and vote on the continuance determining whether or not to hear the case again on February 25, 2014.

Moving on, after a brief review and discussion, it was determined that the minutes from 10/08/2013 could be approved as drafted. It was also determined that the minutes from the 01/28/2014 Study Session and Regular Session should be postponed until 02/25/2014.

Items No. 2, 3 were placed on the consent agenda. Item No. 4, 5, and 6 would be heard.

Nancy Ryan then began her presentation on the Tempe Town Lake Dam Project. She presented that construction was set to begin in April 2014. All agencies involved (i.e. Corps of Engineers, etc.) have reviewed and approved the plans for the dam, and these plans should allow for the lake to come back to the levels it was originally meant to be at. Ms. Ryan then reviewed the amount of materials the project will require and what the costs will be. Following this, Ms. Ryan presented that 1<sup>st</sup> phase of the project will entail, which will be the TCA drain relocation. The new dam will also be 100' further west. Ms. Ryan then presented the design of the new baffle blocks below the dam, as well as the lights along the dam that will mimic the pedestrian bridge lights. Finally, Ms. Ryan presented various views of the dam.

The Study Session adjourned at 6:15 p.m.

Prepared by: Steve Nagy, Administrative Asst. II  
Reviewed by: Ryan Levesque, Senior Planner



---

Ryan Levesque, Senior Planner