

The reason for this letter to the City of DeKalb's City Manager, City Attorney, the Mayor, and all aldermen is to try to convince DeKalb's City Attorney that the vote August 24, 2015 failed the 1st reading in regards to Security Properties of Washington requesting 7 zoning ordinance changes and therefore could not proceed to the 2nd reading September 14, 2015.

The topic of this article will be discussed on Jim Mason's Inconvenient Truth DeKalb Talk Radio Show on WLBK FM 98.9/AM 1360 at 9:10 am on Thursday mornings. Please refer to our website www.inconvenienttruthdekalb.com for more information about this topic along with numerous other topics plaguing our community.

March 11, 2016

Mayor Rey
200 S. 4th Street
City of DeKalb
DeKalb, IL 60115

Re: Mayor Vote Legal Authority – University Village

Mayor Rey:

After reviewing the legal explanation by City of DeKalb Attorney, Dean Frieders, I believe he needs to provide the legal authority requested by the Mayor. He also needs to explain the inconsistencies in his October 24, 2015 “press release.”

1. **Lack of a Tie** on the August 24th, 2015 vote for -037 University Village zoning. DF goes into a lengthy explanation of the standard practice of “receive and file”. At no point, does he defend a lack of a tie. He omitted any legal authority that supposedly counted the aldermen “present” rather than aldermen “holding office. Six (6) aldermen were present, but seven (7) aldermen were “holding office” at the time of the University Village vote August 24th.
 - a. A tie means an even number of affirmative and negative votes on an ordinance.
 - b. There were seven (7) alderman holding office August 24, 2015, of which 3 voted in the affirmative. Four (4) did not vote in the affirmative, according to the Minutes and DF's press release.

- c. The Mayor, erroneously claiming a tie, cast his vote. The DF press release did not show any legal authority allowing the Mayor to vote August 24th on -037. In fact, the laws provided by DF showed that the Mayor was prohibited from voting on 037 because there was no tie of the aldermen holding office.

2. **“The August 24th, 2015 vote was not “receive and file”,** it was for “Passage” of -037. The Agenda says: G. Items for Separate Action ... 3. Ordinance 2015-037 Approving a Planned Development Agreement and Implementing PD-R Zoning for Certain Property in the City of DeKalb (University Village). (First Reading). The words “receive and file” were not on the agenda, as claimed by DF. Instead, the Agenda clearly places 037 before the City Council for “Approval”. Furthermore, the **Proposed ordinance says:**

“ORDINANCE 2015-037 APPROVING A PLANNED DEVELOPMENT AGREEMENT AND IMPLEMENTING PD-R ZONING FOR CERTAIN PROPERTY IN THE CITY OF DEKALB, ILLINOIS (UNIVERSITY VILLAGE).

Again, the proposed ordinance itself uses the word “Approving”, rather than receive and file” stating: “THEREFORE BE IT ORDAINED by the Mayor and City Council of the City of DeKalb, DeKalb County, Illinois, as follows: Section 1. Rezoning and Development Agreement Approved. The City of DeKalb hereby approves the Development Agreement attached hereto as Exhibit A, and authorizes and directs the Mayor of the City of DeKalb to execute such agreement, subject to such minor corrections as shall be acceptable to him with the recommendation of City staff. Further, with regard to the Property, as identified and legally described therein, commonly referred to as University Village, the City hereby grants a rezoning of such Property to PD-R zoning, subject to the restrictions of the Development Agreement. Section 2. All ordinances or portions thereof in conflict with this ordinance are hereby repealed. Section 3. Should any provision of this Ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions will remain in full force and affect the same as if the invalid provision had not been a part of this Ordinance. G-3 August 24, 2015 217 Ordinance 2015-037 Page 2 of 2 Section 4. This Ordinance shall be in full force and effect after passage and publication pursuant to law. Publication date: _____, 2015. Effective date: , 2015. PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a regular meeting thereof held on the _day of , 2015 and approved by me as Mayor on the same day.

The Minutes say: “3. Ordinance 2015-037 Approving a Planned Development Agreement and Implementing PD-R Zoning for Certain Property in the City of DeKalb (University Village). (First Reading)

Assuming the August 24th vote was to “receive and file,” rather than “approve,” the vote failed. Proposed ordinance 037 was neither “received” nor filed.” Nor was it “approved.” The proposed ordinance was not lawfully before the City Council September 14, 2015 for consideration or vote because the August 24, 2015 vote failed.

3. Minutes say “ The term passage is very specific language. The first reading was not passed. Therefore, any activity past the August 24th Meeting is also lacking. The September 14th, 2015 meeting did have 4 members vote and pass on the second reading. Yet, you can’t have a 2nd Reading pass, until the first reading passes. In DeKalb’s own, code, listed on its City website, it clearly allows for the waiving of a second reading and passing of ordinances. In no place, State or City statute does it allow for a the “Waiving of the first Reading” and thereafter automatically passed. The actions of the Alderman on September 14, 2015, was simply a misunderstanding of the first vote. They wrongfully, assumed the First vote, which DF clearly states was “not a passage”, was a failure to lawfully approve the ordinance or to “receive and file.” Therefore, their actions, votes, and affirmation September 14, 2015 are summarily a non-event. **If you don’t pass the First Reading, you have no standing on the Second Reading.**

Our Request:

4. **Jump in logic.** DF jumps to the September 14th, 2015, and states the activity of the August 24th First Reading is irrelevant. Without providing any legal authority DF merely claims that a lack of passage of a First Reading, is negated by the Second Reading! He simply blurts, “the passage of the second Reading, is considered “passage”. He further states, that the critical element was passage of the second Reading in favor of the Ordinance. That is a jump in logic.
5. **Our Request:** We request that DF either supports his position with legal authority stating that the August 24, 2015 First Reading was passed with “Members” present” and/or the City Council acknowledges the letter of the law stating that the Mayor was not authorized to vote August 24, 2015 on the 037 University Village ordinance.

(In closing, at my expense I am articulating these issues for absolute justice in regards to this subject and I hope the city attorney will clear this up so we will not have to proceed with further litigation)

Sincerely,

Jim Mason
Mason Properties