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OPINION NO. 2005-02

TO: John Gerard, Chairperson, Peoria Planning and Zoning
Commission
FROM: Stephen M. Kemp, City Attorney 
DATE: July 6, 2005
SUBJECT: Role of the Alternate member in voting on items and under what
circumstances should their vote be counted.

QUESTION:

1. Under what circumstances may an alternate member vote on an item before the Peoria Planning Commission?
2. What is the effect of a tie vote upon an item voted on by the commission?

OPINION:

The City of Peoria Code (1992) provides for the position of an alternate member of the planning commission. The code states:

Sec. 20-17. Planning and Zoning Commission; members.

(a) The Planning and Zoning Commission of the City shall be composed of seven regular members and one alternate member. All members of the Commission shall be appointed by the Mayor with the approval of the Council in accordance with the provisions of this code.

(b) Members of the Commission appointed as alternates shall be able to participate in all Commission proceedings, but shall not be able to vote, except in accordance with the provisions of this section. Upon a determination by the Chairman that a regular member(s) of the commission is disqualified from participating in a matter or the commission is lacking a quorum, the Chairman shall designate the alternate member present to sit in place of the absent or disqualified regular member. The designated alternate member shall exercise all powers and duties granted to a regular member

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As chair person of the Planning Commission, you have requested a legal opinion as to whether this ruling of the acting chair person is legally correct in light of Peoria City Code Section 20-17, as set forth above. Section 20-17 created the position of alternate commission member and specifies its voting rights. State statute is silent on the voting rights for the position of alternate member of the Planning Commission, therefore the voting rights of the alternate member are only those granted pursuant to the city code.

The code provides that an alternate may vote upon a determination by the chair person that a regular member(s) of the Planning Commission is disqualified from participating in a matter or the commission is lacking a quorum. These are the only circumstances where an alternate member of the Planning Commission may vote as a member of the Planning Commission.

The record for the item in question clearly indicates that no members of the Planning Commission were disqualified from participating in this matter. There were five regular members of the Planning Commission present, which exceeds the minimum quorum of four.

Therefore, it is concluded that the alternate member of the Planning Commission did not cast a legally valid vote in the rezoning case that was before the Planning Commission and the subject of this opinion. As the vote of the alternate member was not legally valid, it should not be counted. It is our opinion that the Motion to recommend denial of the zoning case passed on a vote of three votes in favor and two against.

Therefore, it is our opinion that the Chair person should reverse the ruling of the acting chair person for the meeting in question and rule that the Motion to recommend denial did pass. Further, it is our opinion that the Community Development Department staff be directed to transmit the recommendation of the Commission in the manner provided by A.R.S. 9-462.04.C., D for action by the Peoria City Council at the earliest practicable opportunity.

Should you have any further questions, please do not hesitate to contact this office.

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