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MEMORANDUM

TO: Jim Hock, City Manager
City of Park Ridge

FROM: Everett M. Hill, Jr.

DATE: January 11, 2010

RE: Required Vote to Overturn Planning and Zoning Commission's Denial of
Text Amendment regarding Billboards

You have asked that I provide the reason for the change of opinion on the issue of whether a supermajority vote would be required in the above instance.

By way of background, the Zoning Ordinance amendment to permit billboards, Zoning Case No. TA-09-03, was filed by the City on November 5, 2009. The Commission held a public hearing and voted to deny approval of the text amendment on November 10, 2009. On November 16, 2009, the City Council passed an ordinance amending Section 4.8 of the Zoning Ordinance. The ordinance as amended requires a supermajority vote to overturn the Commission's recommended denial of the text amendment. The amended ordinance is a procedural change to the Zoning Ordinance and changed the vote required to overturn a Commission's denial of a text amendment proposed by the City Council from a simple majority to a supermajority of the entire Council (6 votes). The amended Zoning Ordinance was in effect when the City Council considered the Commission's denial of the billboard text amendment on December 21, 2009.

At the December 7, 2009 Council meeting, I was asked if the new rules would apply to the pending billboard case. I responded that the new (supermajority) rules would not be applied. This advice was consistent with a longstanding general rule. It was also consistent with past practice in Park Ridge where private citizens were typically the applicants on zoning amendments. In these instances, the City had always applied the Zoning Ordinance regulations that were in effect at the time of receipt of a zoning application. That approach was taken for the benefit of private applicants.

In Kathie's preparation for the December 21, 2009 meeting, she did further research on the issue and concluded that because the matter of the vote was procedural and not substantive, and because the City (rather than a private entity) was the applicant; the general rule should not be applied.

This was based on a court interpretation of an Illinois statute which reads, in part, as follows:

No new law shall be construed to repeal a former law, ... as to any act done, ... or any right accrued, or claim arising under the former law, ... *save only that the proceedings thereafter shall conform, so far as practicable, to the laws in force at the time of such proceeding.* 5 ILCS 70/4 (emphasis added).

In interpreting this statute, the Illinois Supreme Court has stated that procedural changes apply retroactively and substantive changes do not. *Id.*, citing *Allegis v. Realty Investors v. Novak*, 223 Ill. 2d 318, 331 (2006).

Kathie and I discussed these matters at length before the December 21, 2009 meeting. While it is a close question, I concurred that our ultimate advice should be that the supermajority voting requirement in the amended Section 4.8 applies to the Council's consideration of whether to overturn the Commission's denial of the billboard text amendment.

If you have any questions or comments, please contact me.