VERNON MYERS
MAYOR - COMMISSIONER

MARY LAWSON BROWN
VICE MAYOR - COMMISSIONER

ALLEGRA KITCHENS
COMMISSIONER

PHIL LEARY
COMMISSIONER

JAMES NORWOOD, JR.
COMMISSIONER

CITY OF PALATKA
CITY OF PALATKA FLORIDA

MICHAEL J. CZYMBOR
CITY MANAGER

BETSY JORDAN DRIGGERS
CITY CLERK

MATTHEW D. REYNOLDS
FINANCE DIRECTOR

GARY S. GETCHELL
CHIEF OF POLICE

MICHAEL LAMBERT
CHIEF FIRE DEPT

DONALD E. HOLMES
CITY ATTORNEY

Regular meeting 2nd and 4th Thursdays each month at 6:00 p.m.

November 21, 2012

TO MESSRS: MARY LAWSON BROWN, ALLEGRA KITCHENS, PHIL LEARY AND JAMES NORWOOD, JR.:

You are hereby notified that a special meeting of the Palatka City Commission is called to be held on Thursday, November 29, 2012, at the regular meeting place of the Palatka City Commission, Palatka City Hall, 201 N. 2nd Street, Palatka, Florida, to commence at 6:00 p.m.

The purpose of the meeting is to:

1. Award Fuel Bids for City Departments and Airport;
2. Accept ranking recommendation on the Request for Qualifications for Waterfront Improvements and authorize staff to begin contract negotiations with top-ranked firm;
3. Discussion: Reconsideration of vote taken September 13, 2012 regarding location of proposed Environmental Center

Is/ Vernon Myers
Vernon Myers, MAYOR

We acknowledge receipt of a copy of the foregoing notice of a special meeting on the 21st day of November, 2012.

Is/ Mary Lawson Brown
COMMISSIONER

Is/ Phil Leary
COMMISSIONER

Is/ James Norwood, Jr.
COMMISSIONER

Is/ Allegra Kitchens
COMMISSIONER

PERSONS WITH DISABILITIES REQUIRING ACCOMMODATIONS IN ORDER TO PARTICIPATE IN THIS MEETING SHOULD CONTACT THE CITY CLERK'S OFFICE AT 329-0100 AT LEAST 24 HOURS IN ADVANCE TO REQUEST ACCOMMODATIONS.

Agenda Item

1

Staff Report

Date: 11-26-12
To: Michael Czymbor – Palatka City Manager
Cc: Gary Getchell – Chief of Police
From: Matt Newcomb and Matt Reynolds
Subject: Staff Report on 2012 Gas and Diesel Fuel RFP.

History:
The City of Palatka has purchased fuel from WWR Inc. and Rozier's Oil Company in the form of delivered fuel and purchase at fuel sites for approximately 12 years. The current markup on delivered fuel from Rozier's Oil Company is .10 cent per gallon. The current markup on fuel from WWR Inc. is .085 cent per gallon for purchases made at the pump. The current arrangement for fuel purchases from WWR Inc. and Rozier's Oil Company was made by former City Manager Allen Bush. No written contract was signed.

In an effort to reduce cost, the City of Palatka requested proposals for the purchase of fuel from fuel sites and delivered fuels. The release date for the Request for Proposals was September 21, 2012.

Discussion:
Four companies submitted proposals. Lewis Oil, WWR Inc., Rozier's Oil Company and FleetCor.

The RFP consisted of two parts. The first being a proposal for fuel purchases at fuel sites. The second being fuel purchases for bulk or delivered fuel. The lowest bid for fuel purchases at fuel sites was submitted by FleetCor. FleetCor quoted a markup of .1575 cent per gallon for unleaded supreme E-10 and unleaded regular E-10 gasoline. The markup on road diesel was quoted at .1825 cent per gallon and DYD diesel was quoted at .25 cent per gallon.

The lowest bid for bulk or delivered fuel was submitted by Rozier's Oil Company. The markup on unleaded regular E-10 gasoline was quoted at .275 cent per gallon. The markup for road diesel and DYD diesel was quoted at .273 cent per gallon. All other bids submitted for gas and diesel fuels had substantially higher levels of markup.

The RFP provided specific direction to the companies who participated in the bid process. The RFP specifically requested pricing based on the Jacksonville OPIS average weekly price plus markup. Several of the vendors did not follow the directions given. For example one bidder used daily OPIS average price, two bidders used weekly OPIS average price and one bidder used OPIS rack average pricing. This made identifying costs difficult.

Markup was used to determine the overall lowest bidder for both the gas and diesel bids and the aviation fuel bids. The lowest bid for fuel sites will be discussed first. As

mentioned above FleetCor quoted a fuel site markup of .1575 cent per gallon for gasoline, .1825 cent for road diesel per gallon and .25 cent for DYD diesel per gallon. The current markup being paid by the City of Palatka is .085 cent per gallon for both gasoline and diesel products. Accepting the proposal from FleetCor would increase markup cost by .0725 cent per gallon on gasoline, .0975 cent per gallon for road diesel and .165 cent per gallon on DYD diesel.

The lowest bidder for bulk or delivered fuel is Rozier's Oil. Currently the City purchases the bulk or delivered fuel from Rozier's Oil at .10 cent per gallon markup. Rozier's quoted a markup of .275 cent per gallon for regular unleaded gasoline and .273 cent per gallon markup for road diesel and DYD diesel. Accepting the proposal from Rozier's Oil for bulk or delivered fuel would increase markup cost by .175 cent per gallon on regular unleaded gasoline and .173 cent per gallon for road diesel and DYD diesel.

Recommendation:
Based on the discussion above it is recommended the City of Palatka reject all bids related to gas and diesel fuels. It will greatly increase the cost of fuel if any of the bids are accepted. Several of the bidders did not follow the guidelines outlined within the RFP which as mentioned above made it very difficult in determining pricing. It has also been determined Putnam County is currently under contract with Rozier's Oil Company. The contract outlines a cost of .06 cent per gallon markup for road diesel and a .055 cent per gallon markup on unleaded plus gasoline. The Putnam County School District is under contract with Mansfield Oil Company. The School Districts contract outlines a .0251 cent per gallon markup for road diesel. It is apparent that better pricing is available for delivered fuels.

Staff Report

Date: 11-26-12
To: Michael Czymbor – Palatka City Manager
Cc: Gary Getchell – Chief of Police
From: Matt Newcomb and Matt Reynolds
Subject: Staff Report on 2012 Aviation Fuel RFP.

History:

The Palatka Municipal Airport has purchased fuel from Eastern Aviation-Shell for several years in the form of 100 LL / Avgas and Jet A with Prist. The current markup on 100 LL / Avgas is .7987. The current markup on Jet A with Prist fuel is .20084.

In an effort to reduce cost, the City of Palatka requested proposals for the purchase of aviation fuel used at the airport. The release date for the Request for Proposals was September 21, 2012.

Discussion:
Eastern Aviation, Perry Brothers Aviation, AvFuel Branding and World Fuel submitted proposals for the purchase of aviation fuel.

The lowest bid submitted for aviation fuel was submitted by the current vendor Eastern Aviation. Eastern Aviation quoted a markup of .05 cent per gallon on both Avgas and Jet A with Prist. Perry Brothers Aviation also quoted the same markup however Eastern Aviation provided additional commodities within the proposal that will reduce cost for the airport.

Markup was used to determine the overall lowest bidder for aviation fuels. As mentioned above the lowest bidder for aviation fuel was Eastern Aviation. The city currently purchases all aviation fuel used at the airport from this company. The current mark up for Avgas is .7987 cent per gallon. The bid markup for Avgas is .05 cent per gallon. The current markup for Jet A with Prist is .20084 cent per gallon. The bid markup for Jet A with Prist is .05 cent per gallon. Accepting the proposal from Eastern Aviation will decrease markup cost by .7487 cent per gallon on Avgas and .15084 cent per gallon for Jet A with Prist.

93,500 gallons of Avgas and 31,800 gallons of Jet A were purchased last year. Accepting the bid of .05 markup for both types of fuel will save .7487 on each gallon of Avgas and .15084 on each gallon of Jet A. Estimated savings of $70,003 on Avgas and $4,796.71 on Jet A, total combined savings of $74,799.71.

Recommendation:
It is recommended the City accept the bid proposal made by Eastern Aviation as it will drastically reduce fuel cost for the airport.

RESOLUTION No. 12 - 53

A RESOLUTION OF THE CITY OF PALATKA, FLORIDA, REJECTING ALL BIDS FOR GASOLINE AND DIESEL FUELS AND ACCEPTING THE MOST RESPONSIVE BID FOR AVIATION FUELS AND AUTHORIZING THE CITY MANAGER AND CITY CLERK TO ENTER INTO A CONTRACT WITH EASTERN AVIATION FUELS, INC.

WHEREAS, the City of Palatka has advertised for bids for aviation, gas and diesel fuels; and

WHEREAS, the City of Palatka has determined that the Bidders who responded to the gasoline and diesel fuel bids did not completely comply with the Bid Specifications and requirements and that the proposed markup set forth in all bids for gasoline and diesel fuels appear to be higher than the current markup; and

WHEREAS, the City of Palatka has determined that the low bidder for aviation fuels is Eastern Aviation Fuels, Inc. with a markup for $.05 per gallon on Jet A and 100LL/Avgas along with other incentives which results in a significant savings and a lower annual cost for the Palatka Municipal Airport.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Palatka, Florida:

1. That all bids for gasoline and diesel fuels are rejected.
2. That the low bid, which is most responsive for Eastern Aviation Fuels, Inc. of $.05 per gallon of Jet A and 100LL/Avgas is hereby accepted.
3. That the City Manager and City Clerk are hereby authorized to enter into a contract with Eastern Aviation Fuels, Inc. for the purchase of Jet A and 100LL/Avgas with a markup of $.05 per gallon.

PASSED AND ADOPTED by the City Commission of the City of Palatka, Florida this 29th day of November, 2012.

CITY OF PALATKA

_____

By: Its MAYOR

ATTEST:

_____

CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS:

_____

CITY ATTORNEY

Agenda Item

2

CITY of Palatka
FLORIDA

CITY COMMISSION AGENDA ITEM

SUBJECT: Acceptance of Architectural, Engineering and Environmental Consulting Services RFQ Ranking and Authorization to Negotiate Contracts

DEPARTMENT: City Hall

ATTACHMENTS: ☐ Ordinance ☒ Resolution ☐ Motion
☐ Support Documents ☐ Other

SUMMARY:

Prior to the special called meeting on November 29, 2012, the evaluation committee will hear presentations from the preliminarily ranked top five (5) respondents as a result of the Request for Qualifications for architectural, engineering and environmental consulting services for design, bid administration, inspection of projects and construction contract management for a passenger/operations terminal, dockside improvements at six locations and an environmental education facility. Immediately following the final presentation the evaluation committee will make a recommendation to the City Commission. A draft resolution is attached for your review. A final version of the resolution, including the ranking order, will be prepared just prior to the meeting. Please feel free to contact me with any questions.

RECOMMENDED ACTION:

Staff recommends the acceptance of this recommendation and respectfully requests the City Commission to authorize the City Manager to negotiate a contract with the top ranked team.

DEPARTMENT HEAD

Submitted: Date:
Requested Agenda: Jonathan Griffith Date: 11-27-12

FINANCE DEPARTMENT Budgeted ☐ Yes ☐ No ☐ N/A Date: _____

CITY ATTORNEY Approved as to Form and Correctness Date: _____

CITY MANAGER Approved Agenda Item For: Date: _____

COMMISSION ACTION:
- ☐ Approved as Recommended
- ☐ Approved With Modification
- ☐ Other
- ☐ Disapproved
- ☐ Tabled To Time Certain

DISTRIBUTION: ☐CA ☐CC ☐CM ☐CD ☐FI ☐FD ☐GC ☐HR ☐MD ☐PD ☐PR ☐UD

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*** PUBLIC NOTICE ***

MEETING OF: Riverfront Improvements Request for Qualifications (RFQ) Evaluation Committee: Jonathan Griffith, Jeff Norton, Thad Crowe, and Commissioner Phil Leary representing City of Palatka; Bobby Holt representing Georgia-Pacific

DATE/TIME: November 29, 2012; 1:30 p.m. – 5:00 p.m.

LOCATION: City of Palatka City Hall, 201 N. 2nd Street, Palatka

PURPOSE: To hear presentations from the preliminarily ranked top five (5) respondents to the Architectural & Engineering Services - Riverfront Improvements RFQ (received at City Hall on November 2, 2012 @ 2:30 p.m.).

1:30-2:00 Robert Taylor, AIA
2:15-2:45 Smith McCrary Architects
3:00-3:30 Passero & Associates
3:45-4:15 LeHuu Partners
4:30-5:00 CRG Architects

Each respondent will be provided 30 minutes to make a presentation to the RFQ Evaluation Committee and answer questions posed by RFQ Evaluation Committee members.

This Notice is being provided per Florida Sunshine Law Requirements as more than one member of the Palatka City Commission may be in attendance at this meeting. This meeting is open to the Public.

If a person decides to appeal a decision made by the body on any matter considered at this meeting/hearing, such person may need to ensure that a verbatim record of the proceedings is made, to include the testimony and evidence upon which any such appeal is to be based.

In accordance with the Americans with Disabilities Act, persons requiring special accommodation to participate in this proceeding should contact the City Clerk's Office at 386-329-0100 no later than 24 hrs prior to the proceedings. For additional assistance if hearing impaired, telephone the Florida Relay Service at 711.

Posted:_____

RESOLUTION No. 12-54

A RESOLUTION OF THE CITY OF PALATKA, FLORIDA, ACCEPTING THE RANKING OF ARCHITECTURAL AND ENGINEERING TEAMS FOR PROFESSIONAL SERVICES, INCLUDING DESIGN, BID ADMINISTRATION, INSPECTION OF PROJECTS AND CONSTRUCTION CONTRACT MANAGEMENT FOR A PASSENGER/OPERATIONS TERMINAL, DOCKSIDE IMPROVEMENTS AT SIX LOCATIONS AND AN ENVIRONMENTAL EDUCATION FACILITY; AUTHORIZING THE CITY MANAGER TO NEGOTIATE A CONTRACT WITH THE TOP RANKED FIRM FOR SAID SERVICES; AND PROVIDING AND EFFECTIVE DATE.

WHEREAS, on 11/2/12 the City received statements of qualifications from qualified individuals or firms for professional architectural, engineering and environmental consulting services for design, bid administration, inspection of projects and construction contract management for a passenger/operations terminal, dockside improvements at six locations and an environmental education facility (the **Projects**), and

WHEREAS, the evaluation committee has reviewed the qualifications and selected the top five respondents (teams) on 11/20/12; and

WHEREAS, on 11/29/12 the evaluation committee heard presentations from the top five respondents and has recommended the City Commission accept the teams in the following order as the most responsive to the City's RFQ

1. _____
2. _____
3. _____
4. _____
5. _____; and

WHEREAS, the selection committee desires to negotiate a contract with the top-ranked firm in accordance with the Florida Consultants Competitive Negotiation Act (CCNA), F.S. 287.055; and

WHEREAS, the **City** deems it necessary and in the best interest that the City Manager be authorized to negotiate a contract with the top-ranked firm for said **Projects**.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Palatka, Florida:

1. That the following respondents (teams) are hereby ranked in order of preference as being the most qualified to provide services for the design, bid administration, inspection of projects and construction contract management for a passenger/operations terminal, dockside improvements at six locations and an environmental education facility:

    1. _____
    2. _____
    3. _____
    4. _____
    5. _____

2. That the City Manager is hereby authorized to negotiate a contract for services with _____ to be presented to the City Commission. Should a satisfactory contract not be achievable with the number one ranked proposer, then that proposer shall be rejected and negotiations shall begin with the number 2 ranked firm and so on:

3. Procurement and contracting of all services shall conform to the Florida Consultants Competitive Negotiation Act (CCNA), F.S. 287.055.

PASSED AND ADOPTED by the City Commission of the City of Palatka, Florida this 29th day of November 2012.

CITY OF PALATKA

_____

By: Its MAYOR

ATTEST:

_____

CITY CLERK

APPROVED AS TO FORM
AND CORRECTNESS:

_____

CITY ATTORNEY

Agenda Item

3

VERNON MYERS
MAYOR - COMMISSIONER

MARY LAWSON BROWN
VICE MAYOR - COMMISSIONER

ALLEGRA KITCHENS
COMMISSIONER

PHIL LEARY
COMMISSIONER

JAMES NORWOOD, JR.
COMMISSIONER

CITY OF PALATKA
FLORIDA

MICHAEL J. CZYMBOR
CITY MANAGER

BETSY JORDAN DRIGGERS
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CHIEF OF POLICE

MICHAEL LAMBERT
CHIEF FIRE DEPT

DONALD E. HOLMES
CITY ATTORNEY

Regular meeting 2nd and 4th Thursdays each month at 6:00 p.m.

To: **Mayor Myers and City Commission**

From: Michael J. Czymbor, City Manager

Date: November 27, 2012

RE: Update on the St. Johns River Center Project

Various City Officials (Mayor, City Manager, City Attorney and Project Manager) on November 19th conducted a productive conference call with several Georgia Pacific (GP) Officials to discuss the status of St. Johns River Center Project including the project schedule (Task Timeline), Issuance of the Request For Qualification (RFQ) for architectural, engineering, landscape architectural and environmental engineering, final site selection for the facility, zoning and land use issues on the riverfront property, letter from the FDEP regarding facility location, and the project draw schedule. Listed below is a brief summary of our discussions:

I. Project Schedule: City staff has been vigilant in meeting the proposed task and timeline schedule that was proposed to GP officials in September. The City reemphasized our commitment to completing the project on time and on budget (RFQ) Exhibit A (attached) is the latest project schedule.

II. Issuance of Request for Qualifications for Professional Services for the Environmental Center: The City issued a RFQ in October for complete architectural, engineering, landscape architecture, and environmental engineering and design services for the project. The City received a fantastic response to the RFQ. A RFQ Committee has reviewed and ranked the responses and has scheduled presentations to be received by the Committee from the highest ranked respondents on November 29. The Committee will be completing their evaluation and developing a recommendation for your review at a special City Commission meeting that evening. Once the City Commission either accepts the Committee's recommendations or designates the highest and best respondents, staff can negotiate the appropriate scope of work and fee structure for the project. We are expecting to have the contract before you to be considered at the December 13, 2012 City Commission meeting.

III. Final Site Selection of the Facility: The City Commission, at their meeting on Sept. 13, 2012 by majority voted to locate the environmental facility on the river front near the torpedo monument and water fountains. During our meeting with GP Officials we specifically inquired if they had a preferred location for the facility. There answer was that they "had no preference on the proposed location of the facility" as long as it was cost neutral, no impact on the project schedule or no effect on their permit for the proposed mitigation project. City staff assured them that the project will be on budget and time and that the FDEP has tentatively approved the proposed location. Included as Exhibits B-D are a possible

graphic depiction of the proposed facility on the riverfront. The City indicated to GP Officials that the proposed location would be discussed at a special meeting on November 29, 2012, but regardless of the results of the meeting, the City was fully committed to our partnership with GP and the success of the project.

IV. Zoning and Land Use Issues: GP officials expressed questions and concerns about the recent discussions and actions of the City Commission in regards to the FLUM, Zoning and Comp Plan issues on the riverfront and the proposed location of the Center. The City Attorney explained the current FLUM and zoning issues and the need for the Comprehensive Plan, Land Usage and Zoning to be compatible and consistent pursuant to Florida Statute. The Mayor assured GP officials that the City Commission will take the proper legislation action to make the Comprehensive Plan, FLUM and Zoning Code consistent and support the environmental center regardless of location.

V. Letter from FDEP Regarding Facility Location: The City previously received a verbal commitment from FDEP Program Administrator NE District that either location would be acceptable and would not impact GP's proposed permit. On November 20, 2012 I received a written confirmation on the matter (Exhibit E).

VI. Proposed Project Draw Schedule and Formal Project Agreement: The City and GP discussed a preliminary draw schedule for the project and the City's need to not have to front the money for payment requests and be reimbursed later by GP. The City agreed to develop a proposed draw schedule in conjunction with the professional consultant which will be selected. The draw schedule would be included in the formal agreement between the parties. GP was in the process of developing and refining a proposed agreement for the City to consider for the project which would be discussed at a future meeting.

Please contact me directly with any questions, comments or concerns on this memorandum.

EXHIBIT A

St. Johns River Center

Project Schedule

Task/Milestone		Estimated Completion Date
1. Initiation		
1.a.	Define content guiding principles	21-Sep-12
1.b.	FDEP approval of content guiding principles	21-Sep-12
2. Planning & Design		
2.a.	Advertise RFQ for architectural, engineering and environmental consulting services	5-Oct-12
2.b.	Develop final agreement between GP & City	26-Oct-12
2.c.	RFQ deadline	2-Nov-12
2.d.	Selection of consultants and negotiation of contracts	29-Nov-12
2.e.	Execution of GP/City agreement	13-Dec-12
2.f.	City commission award of contracts	13-Dec-12
2.g.	Content advisory committee meeting	December/January TBD
2.h.	50% completion of content and curriculum	1-Feb-13
2.i.	50% completion of building plans and specifications	1-Feb-13
2.j.	Content advisory committee meeting	February 2013 TBD
2.k.	100% completion of content and curriculum	8-Mar-13
2.m.	Construction estimate review and value engineering	8-Mar-13
2.n.	Develop bid package for curriculum content	15-Mar-13
2.o.	100% completion of building plans and specifications	15-Mar-13
2.p.	Invitation(s) to bid (45 Days)	19-Mar-13
2.q.	Bid deadline and opening	3-May-13
3. Construction & Implementation		
3.a.	City commission award of contract(s)	23-May-13
3.b.	Pre-construction meeting	28-May-13
3.c.	Breaking ground ceremony	31-May-13
3.d.	Develop staffing and management plan	July 2014 TBD
3.e.	Curriculum and content training	July 2014 TBD
3.f.	Substantial completion of construction	January 2014 TBD
3.g.	Exhibit & furnishings installation	February 2014 TBD
3.h.	Punch-list	February 2014 TBD
3.i.	FDEP, GP & City exit meeting & walk-through	March 2014 TBD
3.j.	Building dedication ceremony	March 2014 TBD
3.k.	Monitoring	March-August 2014

EXHIBIT B

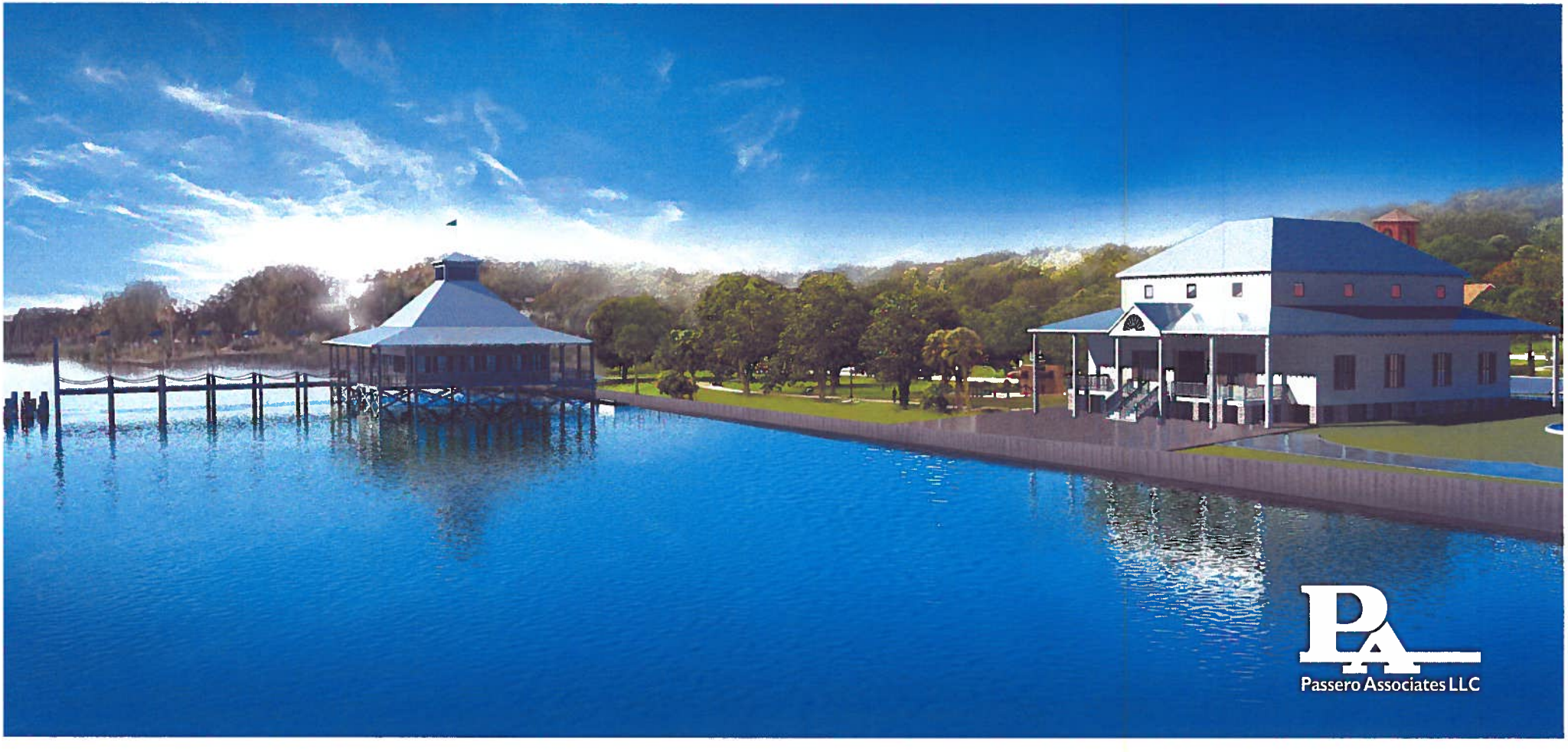

EXHIBIT C

EXHIBIT D

Michael J. Czymbor EXHIBIT E

From: Bowles, Trish <PLBOWLES@gapac.com>
Sent: Tuesday, November 20, 2012 11:31 AM
To: Michael J. Czymbor
Subject: FW: No effects Letter for Georgia Pacific
Attachments: image009.jpg; image010.jpg; image011.jpg; image012.jpg

Mike,
Please see the note from FDEP Jim Maher below. Please let me know if this is does not meet your needs.
Thanks
From: Maher, Jim [mailto:Jim.Maher@dep.state.fl.us]
Sent: Tuesday, November 20, 2012 10:23 AM
To: Lathrop, Alison J. (GP LAW)
Cc: Curtis, Michael; Long, Melissa M.; Strong, Greg
Subject: RE: No effects Letter for Georgia Pacific

Hello Alison,
As the No Effects Letter was not location specific, and I have toured and looked at both locations discussed, either one would be acceptable to meet the mitigation project requirements without further amendment to the permit. Please let me know if you or your partner the City would like to discuss this further. Thank you.
Sincerely,
Jim

James R Maher, PE
Program Administrator
Northeast District
Submerged Lands/Environmental Resources Program
7777 Baymeadows Way West, Suite 100
Jacksonville, Florida 32256
Jim.Maher@dep.state.fl.us<mailto:Alisha.Simpson@dep.state.fl.us>
O: 904-256-1650
C: 904-509-5389

If you have received an authorization from the ERP program, please click on the survey link (below) to provide us valuable feedback about your experience.

[cid:image009.jpg@01CDC708.EE57CE10]<http://floridadep.erp-permit-customer-survey.sgizmo.com/s3/>Additional web resources:[cid:image010.jpg@01CDC708.EE57CE10]<http://www.dep.state.fl.us/>[cid:image011.jpg@01CDC708.EE57CE10]<http://www.dep.state.fl.us/secretary/portal/default.htm>[cid:image012.jpg@01CDC708.EE57CE10]<http://www.dep.state.fl.us/water/wetlands/erphelp/index.htm>

Karen Venables

From: Michael J. Czymbor
Sent: Tuesday, November 27, 2012 8:53 AM
To: Karen Venables
Subject: FW:
Attachments: memo re reconsideration.docx

For the CC packet.

Michael J. Czymbor-CM
City Manager
City of Palatka, FL
386-329-0104

From: Don Holmes [mailto:don@donholmeslaw.com]
Sent: Friday, November 23, 2012 10:07 AM
To: Michael J. Czymbor
Cc: 'Debby Thompson'
Subject:

Mike

Attached please find the memo you requested. I am going to spend a few more minutes looking at some Attorney General Opinions but if you don't hear further from me, the attached will be my final opinion. I should be able to access e-mail where I am staying in Ohio. I will stay in touch although my computer time will probably be at the end of the day.,
Thanks
Don

TAX ADVICE DISCLOSURE: Pursuant to the requirements of Internal Revenue Service Circular 230, we advise you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of: (1) avoiding penalties that may be imposed under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any transaction or matter addressed in this communication.

CONFIDENTIALITY NOTICE: The information and all attachments contained in this electronic communication are legally privileged and confidential information, subject to the attorney-client privilege and intended only for the use of intended recipients. If the reader of this message is not an intended recipient, you are hereby notified that any review, use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately of the error by return email and please permanently remove any copies of this message from your system and do not retain any copies, whether in electronic or physical form or otherwise.

Thank you.

Donald E. Holmes, P.A.
222 N. 3rd St.
Palatka, FL 32177
(386) 328-1111

Fax: (386) 328-3003

MEMORANDUM
TO: City Manager
From: City Attorney
Re: Motion to Reconsider
November 23, 2012

A question has arisen regarding the procedure which might be used by one or more City Commissioners to initiate reconsideration of the decision made by the City Commission to locate the G-P Environmental Educational Resource Center on the river-side of Memorial Parkway/Drive. The decision was made by a vote of 3-2 at a regular meeting of the City Commission some weeks prior to the writing of this memo.

First, I think that it is only reasonable to conclude that the City Commission is authorized and empowered to take an action or make a decision which essentially reverses an earlier action or decision of the Commission – so long as the new action or decision is taken in the same manner or form as the "old" decision or action. In other words, if the Commission decides by "roll-call" vote at a duly noticed meeting to take an action, the action at issue should only be reversed at a duly noticed meeting by "roll-call" vote. Negative consequences could, depending upon the circumstances of the event, be associated with the City's reversal of a previous decision, i.e. if some entity has relied upon what appears to be a "final" decision or action taken by the City Commission and is then negatively impacted by the City's later reversal of its position, the City could be liable for any damages which the entity may have incurred. It is not my intent to suggest that any entity has relied to their detriment upon the City's recent decision to locate the environmental center on the river-side of Memorial Drive. I am simply noting the concept in general. It is <u>not</u> logical or reasonable to believe that a governmental entity can not reverse a decision that it has made, so long as procedural safeguards are met and the governmental entity bears the consequences of detrimental reliance by the public upon its earlier decision. To argue otherwise would be to argue that once a governmental entity takes an action or makes a decision by vote, the action or decision can never be readdressed or reversed by the governmental entity. Such an argument would not be consistent with practice or practicality.

Having stated my opinion that the City is generally authorized and empowered to reconsider or reverse a previous decision, the process of "reconsidering" probably shouldn't be accomplished by the stating of a simple "motion to reconsider" as I had initially thought. In the absence of specific provision within the City Code, the City Commission generally conducts its meetings in accord with Robert's Rules of Order. Robert's Rules of Order specifically provides that a motion to reconsider "can be made only on the day the vote to be reconsidered was taken, or the next succeeding day, a legal holiday or a recess not being counted as a day". Accordingly, rather than labeling the City Commission's new discussions regarding the location of the G-P Center as a "reconsideration", I think that it is preferable to simply agenda the issue as follows: "Discussion Concerning Location of G-P Environmental Educational Center" . It is my opinion that "new " testimony or information regarding the decision at hand should be allowed (if offered) rather than limiting the Commission's consideration to only those matters that were brought before the Commission when the issue was originally decided. It is not my intent to offer the opinion that "new" information <u>must</u> be presented, I am simply offering the opinion that if new information is offered it should be considered. A "new" decision regarding the matter at hand could then be made upon motion made by any Commissioner and upon majority vote. I realize that only a Commissioner who had voted with the prevailing side can make a "motion to reconsider". However, as noted above, the issue at hand can't technically be addressed by "motion to reconsider" because the issue isn't being addressed on the same day as the original motion, or even at the next meeting of the Commission after the original motion was made. Accordingly, the rules applicable to a "motion to

reconsider" wouldn't be applicable to a new discussion and potential decision regarding the location of the G-P Center.

It is sometimes not easy to discuss a procedural matter in the context of a controversial or hotly-debated issue, for obvious reasons. For purposes of analogy, if the City wished to "rethink" its decision to install and utilize "red-light cameras", would anyone argue that the City was powerless to do so since the time for making a "motion for reconsideration" had passed? I seriously doubt it. However, the City might well be liable to the entities that had relied upon its initial decision regarding the red-light cameras if one had suffered damages as a result of this reliance, i.e. the company that installed the cameras with the expectation of generating profits from same. Perhaps the analogy will be of assistance, perhaps not.

By facsimile transmission I will send to you those portions of "Robert's Rules" upon which I have relied in stating my opinion.

Respectfully Submitted,

s/ Donald E. Holmes

36. Reconsider.[1] This motion is peculiar in that the making of the motion has a higher rank than its consideration, and for a certain time prevents anything being done as the result of the vote it is proposed to reconsider. It can be made only on the day the vote to be reconsidered was taken, or on the next succeeding day, a legal holiday or a recess not being counted as a day. It must be made by one who voted with the prevailing side. Any member may second it. It can be made while any other question is pending, even if another member has the floor, or after it has been voted to adjourn, provided the chair has not declared the assembly adjourned. It may be made after the previous question has been ordered, in which case it and the motion to be reconsidered are undebatable.

While the making of the motion to reconsider has such high privilege, its consideration has only the rank of the motion to be reconsidered, though it has the right of way in preference to any new motion of equal rank, as illustrated further on; and the reconsideration of a vote disposing of a main question either temporarily or permanently may be called up, when no question is pending, even though the general orders are being carried out. The motion to reconsider cannot be amended, postponed indefinitely, or committed. If the reconsideration is laid on the table or postponed definitely, the question to be reconsidered and all adhering questions go with it.[2] The previous question and the motions limiting or extending the limits of debate may be applied to it when it is debatable. It is undebatable only when the motion to be reconsidered is undebatable. When debatable it opens to debate the merits of the question to be reconsidered. It cannot be withdrawn after it is too late to renew the motion. If the motion to reconsider is lost it cannot be repeated except by general consent. No question can be twice reconsidered unless it was materially amended after its first reconsideration. A reconsideration requires only a majority vote, regardless of the vote necessary to adopt the motion reconsidered.

The motion to reconsider *cannot be applied* to a vote on a motion that may be renewed within a reasonable time; or when practically the same result may be attained by some other parliamentary motion; or when the vote has been partially executed (except in case of the motion to limit debate), or something has been done as the result of the vote that the assembly cannot undo; or to an affirmative vote in the nature of a contract, when the other party to the contract has been notified of the vote; or to a vote on the motion to reconsider. In accordance with these principles, votes on the following motions *cannot be reconsidered*: Adjourn; Take a Recess; Lay on the Table; Take from the Table; Suspend the Rules or Order of Business; and Reconsider. Affirmative votes on the following cannot be reconsidered: Proceed to the Orders of the Day; Adopt, or after they are adopted, to Amend, or Repeal, or Rescind, the Constitution, By-laws, or Rules of Order or any other rules that require previous notice for their amendment; Elect to membership or office if the member or officer is present and does not decline, or if absent and has learned of his election in the usual way and has not declined; to Reopen Nominations. A negative vote on the motion to Postpone Indefinitely cannot be reconsidered as practically the same question comes up again when the vote is taken on the main question. After a committee has taken up the matter referred to it, it is too late to reconsider the vote committing it, though the committee may be discharged. But after debate has proceeded under an order limiting or extending the limits of debate, the vote making that order may be reconsidered, as the debate may develop facts that make it desirable to return to the regular rules of debate. The minutes, or record of proceedings, may be corrected at any time without reconsidering the vote approving them.

If the main question is pending and it is moved to reconsider the vote on any subsidiary **[12]**, incidental **[13]**, or privileged **[14]** motion, the chair states the question on the reconsideration the moment the motion to be reconsidered is in order if it were made then for the first time. Thus, if, while the motions to commit, for the previous question, and to lay on the table are pending, it is moved to reconsider a negative vote on postponing to a certain time, the chair proceeds to take the vote on laying on the table and, if that is lost, next on the previous question, and then on reconsidering the vote on the postponement, and if that is adopted, then on the postponement, and if that is lost, then on to commit. If the motion to lay on the table had been carried, then when the question was taken from the table the same method of procedure would be followed; that is, the question would be first on ordering the previous question, and next on reconsidering the vote on the postponement, etc. If the reconsideration of an amendment of the first degree is moved while another amendment of the same degree is pending, the pending amendment is first disposed of and then the chair announces the question on the reconsideration of the amendment. If the reconsideration of an amendment to an immediately pending question is moved the chair at once announces the question on the reconsideration.

If the reconsideration is moved while another subject is before the assembly, it cannot interrupt the pending business, but, as soon as that has been disposed of, if called up it has the preference over all other main

motions and general orders. In such a case the chair does not state the question on the reconsideration until it is called up.

If the motion to reconsider is made at a time when the reconsideration could be called up if it had been previously made, the chair at once states the question on the reconsideration, unless the mover adds to his motion the words, "and have it entered on the minutes," as explained further on.

If, after the vote has been taken on the adoption of a main motion, it is desired to consider the vote on an amendment, it is necessary to reconsider the vote on the main question also, and one motion should be made to cover both votes. The same principle applies in case of an amendment to an amendment, whether the vote has been taken on the resolution, or only on the amendment of the first degree. When the motion covers the reconsideration of two or three votes, the debate is limited to the question that was first voted on. Thus, if the motion is to reconsider the votes on a resolution and amendments of the first and second degree, the debate is limited to the amendment of the second degree. If the motion to reconsider is adopted the chair states the question on the amendment of the second degree and recognizes the mover of the reconsideration as entitled to the floor. The question is now in exactly the same condition it was in just previous to taking the original vote on that amendment.

The *Forms* of making this motion are as follows: "I move to reconsider the vote on the resolution relating to a banquet." "I move to reconsider the vote on the amendment to strike out 'Wednesday' and insert 'Thursday.'" [This form is used when the resolution is still pending.] "I move to reconsider the votes on the resolution relating to a banquet and on the amendment to strike out 'Wednesday' and insert 'Thursday'" [This form is used when the vote has been taken on the resolution, and it is desired to reconsider the vote on an amendment.] When the motion to reconsider is made the chair states the question, if it can then be considered, and proceeds as with any other question. If it cannot be considered at that time, he says, "Mr. A moves to reconsider the vote on.... The secretary will make a note of it," and proceeds with the pending business. The reconsideration, after being moved, is brought before the assembly for action as explained in the previous paragraph. If it is *called up* by a member, he simply says, after obtaining the floor, "I call up the motion to reconsider the vote on ..." This call requires no second or vote. If the call is in order, as previously explained, the chair says, "The motion to reconsider the vote [or votes] on ... is called up. The question is, 'Will the assembly reconsider the vote [or votes] on ...? Are you ready for the question?'" If the reconsideration is one that the chair states the question on as soon as it can be considered (as when it is moved to reconsider an amendment while another amendment is pending), as soon as the proper time arrives the chair states the question on the reconsideration the same as if the motion to reconsider were made at this time.

When the debate, if there is any, is finished, he *puts the question* thus: "As many as are in favor of reconsidering the vote on the resolution relating to a banquet, say *aye*; those opposed say *no*. The ayes have it and the vote on the resolution is reconsidered. The question is now on the resolution, which is," etc. Or, the question may be put thus: "The question is, Will the assembly reconsider the votes on the resolution relating to a banquet, and on the amendment to strike out 'Wednesday' and insert 'Thursday?' As many as are in favor of the reconsideration say *aye*; those opposed say *no*. The ayes have it and the votes on the resolution and the amendment are reconsidered. The question is now on the amendment, which is," etc. If the motion to reconsider is adopted the business is in exactly the same condition it was in before taking the vote, or the votes, that have been reconsidered, and the chair instantly states the question on the immediately pending question, which is then open to debate and amendment as before.

The *Effect of Making* this motion is to suspend all action that the original motion would have required until the reconsideration is acted upon; but if it is not called up, this effect terminates with the session[3] **[63]**, except in an assembly having regular meetings as often as quarterly, when, if not called up, its effect does not terminate till the close of the next regular session. As long as its effect lasts, any one at an adjourned, or a special, or a regular meeting, may *call up* the motion to reconsider and have it acted upon, though it is not usual for any one but the mover to call it up on the day it is made if the session lasts beyond that day and there is no need of prompt action.

The *Effect of the Adoption* of this motion is to place before the assembly the original question in the exact position it occupied before it was voted upon; consequently no one, after the reconsideration is adopted, can debate the question reconsidered who had on that day exhausted his right of debate on that question; his

only recourse is to discuss the question while the motion to reconsider is before the assembly. If the question is not reconsidered until a later day than that on which the vote to be reconsidered was taken, then it is open to free debate regardless of speeches made previously. When a vote taken under the operation of the previous question is reconsidered, the question is then divested of the previous question, and is open to debate and amendment, provided the previous question had been exhausted by votes taken on all the questions covered by it, before the motion to reconsider was made.

In standing and special committees a vote may be reconsidered regardless of the time elapsed since the vote was taken, provided the motion is made by one who did not vote with the losing side, and that all members who voted with the prevailing side are present, or have received due notice that the reconsideration would be moved at this meeting. A vote cannot be reconsidered in committee of the whole.

Reconsider and Have Entered on the Minutes.[4] The motion to reconsider, as previously explained in this section, provides means for correcting, at least on the day on which it occurred, errors due to hasty action. By using the same motion and having it entered on the minutes so that it cannot be called up until another day, a means is provided for preventing a temporary majority from taking action that is opposed by the majority of the society. This is needed in large societies with frequent meetings and small quorums, the attendance in many cases not exceeding ten per cent of the membership. It enables a society with a small quorum to protect itself from injudicious action by temporary majorities, without requiring previous notice of main motions and amendments as is done in the English Parliament. To accomplish this, however, it is necessary to allow this form of the motion to be applied to a vote finally disposing of a main motion, regardless of the fact that the motion to reconsider has already been made. Otherwise it would be useless, as it would generally be forestalled by the motion to reconsider, in its simple form, which would be voted down, and then this motion could not be made. As this form of the motion is designed only to be used when the meeting is an unrepresentative one, this fact should be very apparent, and some members of the temporary minority should vote with the temporary majority on adopting or postponing indefinitely a main motion of importance, when they think the action is in opposition to the wishes of the great majority of the society. One of them should then move "to reconsider the vote on the resolution [or motion] and have it [or, request that it be] entered on the minutes," which has the effect of suspending all action required by the vote it is proposed to reconsider, as previously explained, and thus gives time to notify absent members of the proposed action. If no member of the temporary minority voted with the majority, and it is too late for any one to change his vote so as to move to reconsider, then some one should give notice of a motion to rescind the objectionable vote at the next meeting, which may be done by a majority vote after this notice has been given.

Should a minority make an improper use of this form of the motion to reconsider by applying it to a vote which required action before the next regular business meeting, the remedy is at once to vote that when the assembly adjourns it adjourns to meet on another day, appointing a suitable day, when the reconsideration could be called up and disposed of. The mere making of this motion would probably cause the withdrawal of the motion to reconsider, as it would defeat the object of that motion if the majority of the society is in favor of the motion to be reconsidered. If the motion to reconsider is withdrawn, of course the other would be.

This form of the motion to reconsider and have entered on the minutes differs from the simple form to reconsider in the following respects:

(1) It can be made only on the day the vote to be reconsidered is taken. If a meeting is held on the next day the simple form of the motion to reconsider, made then, accomplishes the object of this motion by bringing the question before the assembly on a different day from the one when the vote was taken.

(2) It outranks the simple form of the motion to reconsider, and may be made even after the vote has been taken on the motion to reconsider, provided the result of the vote has not been announced. If made after the simple form of the motion to reconsider, it supersedes the latter, which is thereafter ignored.

(3) It can be applied only to votes which finally dispose of the main question. They are as follows: an affirmative or negative vote on adapting, and an affirmative vote on postponing indefinitely, a main question. And it may be applied to a negative vote on the consideration of a question that has been objected to, provided the session extends beyond that day.

(4) In an assembly not having regular business meetings as often as quarterly, it cannot be moved at the last business meeting of a session.

(5) It cannot be called up on the day it is made, except when it is moved on the last day of a session of an assembly not having regular business sessions as often as quarterly, when any one can call it up at the last business meeting of the session.

After it is called up there is no difference in the treatment of the two forms of the motion.