15 August 2010

To: Tim Cooley, Director, City of Madison Economic Development Division
    Members of the City of Madison Economic Development Commission

From: Erik Paulson
      616 E Dayton St (District 2)
       Madison

Re: City Development Review and Approval Initiative comments

Dear Mr. Cooley and members of the EDC:

Per the Mayor's and your request for contributions from the community on how Madison's development review process can be improved, please find the following ideas for your consideration.

Please note that I have also signed on to the letter you received earlier from Capitol Neighborhoods, Inc. I continue to support that letter and its contents; for brevity, I mostly omit points already raised there, and their omission here should not be considered any indication of a lack of support. Similarly, due to time constraints this summer, I was not able to share many of the ideas in this with the CNI group, so the fact that they appear in a separate letter should say nothing of support or nonsupport by CNI.

Finally, at the end of this letter, I have attached the remarks I made at the first public meeting for a proposal near my home, describing and soliciting members for a neighborhood steering committee that I chaired for the project. I believe it is consistent with both the CNI Development Protocol and the City of Madison Development Best Practices Guide. I hope that it is useful for you as you try to understand the role that neighborhood associations could and should play in our city processes.

Ideas to Improve the Development Process in Madison

1. **Relentlessly stay on message: Madison is a good place for development projects.** The community has allowed the question of "Is Madison a good place for development?" – which is only true on the flimsiest of evidence - to become a self-perpetuating notion (and self-fulfilling in the negative) because we do not aggressively reject even the premise of the question. In truth, we all know that Madison is a good place for development, but yet we continue to hand-wring that we are somehow flawed.

There are three stakeholders that could do better here:
   A. City leadership should be more vocal in reinforcing this message. The Mayor is a fantastic communicator, and uses his blog, speeches, and written articles with

more skill than virtually any other public figure in Wisconsin. Just this week he penned a great article in the Isthmus "In Defense of Madison." However, he devoted none of his 2,936 words to directly confronting the bad-for-development meme. Given the fact he very publically has raised the profile of this issue, I found it very disappointing that he found nothing good to say about development in Madison. Similarly, senior city staff should be very mindful when making public comments. Privately, we need to ensure that they are able to speak frankly to policy makers and forcefully raise issues, but it is not good for the city's image nor for their relationship with policymakers when they are too vocal in their public criticisms. Public perception does matter.

   B. The Development Community should be much more vocal in celebrating their successes, which are numerous. Most people in Madison are sick of hearing about the Edgewater, and in particular how the Edgewater represents a bad process. It would be nice to be sick of hearing about how a project was a tremendous success. The development community should pick a couple of successful projects, and then not shut up about them.

   C. The Neighborhood Associations similarly should also celebrate the successful developments in their neighborhoods.

To bring these together, perhaps each year the Mayor's Office could identify a project or three as "Projects of the Year" and widely trumpet them across the state and nation, and include input from the development team and other stakeholders (neighborhood groups, historic preservation groups, environmental groups, social justice groups, etc). The best Defense of Madison is a good offense, and this would be a low-cost way to fight back against the bad-for-development meme.

2. **Clearly identify and articulate problems with the current processes.** No process is perfect, and everything should be reviewed from time to time. One of the wonderful things about Madison is we are thorough and have wide-ranging suggestions, particularly when it comes to how can we improve things. We are a city of optimists, and can always think of new positives. Occasionally, it would do us well to enumerate the negatives, and from there try to identify solutions. This may such an occasion.

3. **We should create a second UDC**. It would be clone of the existing UDC - identical in charge and operating procedures. Proposals would be randomly assigned to UDC A or UDC B at application time; projects would go to only one UDC as is now. This suggestion drew a few snickers at the neighborhood summit, but I think it has some merit. For one, if the UDC is having trouble completing their work, scaling them up by adding a second, identical committee with the same rules and charge would reduce the workload per commission. We have a deep enough bench in the city that we could fill two committees, and if necessary we could hire more staff to support it. By randomly assigning projects to a given UDC - somewhat late in the process – developers would not be able to design "for" the individuals on the UDC. This may seem like a terrifying prospect, but I think it would improve the quality of designs in Madison. Architects would actually be liberated, and have more confidence to design

for themselves, and not an audience of nine. The members of the UDCs, being mindful that there is another committee equal to their own, would hopefully make more decisions as a UDC and less as individuals.

Having two UDCs also opens new possibilities procedure-wise. For example, on complicated projects, the Plan Commission and/or Common Council could request the input of both UDCs. The second UDC could also serve as an appeal process in extraordinary circumstances, either as a separate body or as a joint, super UDC.

4. **The city should better fund the creation of neighborhood plans**. Instead of neighborhoods fundraising or applying for grants to bring on consultants, the city should hire two new staff people who are devoted to working with neighborhoods to create or update plans, ideally working through the entire city every 7 to 10 years. With the updated plans, city staff and policymakers can aggressively target potential developers, which at least concept-wise are "pre-approved."

5. **Neighborhoods should receive more training on how to respond to development proposals.** This training does not necessarily have to be provided by the city; many neighborhoods are more experienced in handling development proposals and are potentially in a position to train other neighborhoods, particularly with the support of the Neighborhood Planning Councils. The Neighborhoods have in the past talked about doing these sorts of trainings – the Mayor should use his bully-pulpit and his role as convener-in-chief to deliver a charge to neighborhoods to make it a reality, and if necessary to provide the resources to make it happen. A better-trained neighborhood will make for a smoother process for developers, and hopefully both increase the likelihood a developer would propose projects and not be scared off by the prospect having to suffer through a bad neighborhood process, and lead to better projects coming out of the pre-approval process.

6. **Neighborhood Associations should be free to decide their membership as they see fit.** Neighborhood associations exist primarily to organize around the interests of residents. Development review is only one part of their mission. Furthermore, neighborhood associations have no special powers in the approval process. The only consideration they currently receive is a requirement that they be notified in advance of a formal application, which is hardly a significant power. The neighborhood association position on a project has no more formal standing than that of any other group. It therefore does not follow that a neighborhood association ought to have membership standards dictated to them, any more than membership standards are dictated to any other group that weighs in on a project.

If the city believes that it should dictate membership standards and procedures to neighborhood association, then the city ought also to devolve some responsibilities and approval powers to the neighborhood associations. However, I doubt that anyone believes this would be a good idea – least of all the neighborhood associations.

Whenever possible, of course, neighborhood associations, developers, alders, and other stakeholders should work together to co-schedule meetings, keep each other informed, and generally promote efficiency throughout the process. Happily, that is far and away the most common scenario in Madison, particularly in successful developments. In the end, though, the neighborhood association is responsible only to its own membership, and the city should respect that.

7. **The development community should organize a feedback/best practices group** that developers, particularly newer/smaller developers, can approach with concepts early in the process.

8. **Projects should not be killed too early, especially not privately**. Some proposals, of course, will be rejected – but rejecting them too early means that we as a community don't learn much from them. The longer we can let the project develop, the better. Perhaps the project can be fixed, or a failed project could be the seed that a different project ultimately arises from, or at least identifies issues that might be relevant to a particular location. There's obviously a balance to be found: it's unfair to ask a developer to take a project to full design stage when we know there is little change it will be approved. However, stomping on a project when it just at the green shoot phase should be avoided because we don't know what it will grow into.

9. **The first contact point for a developer should be city staff**. It should not be the Alder. The Alder is obviously important to the process and should be involved early, but if the developer has not contacted city staff the Alder should immediately refer them to the staff and let them make first contact. Some of this is to ensure that the all projects receive proper information, and that as a city the information is recorded. Additionally, it is important to remember that no alder has veto power over any project in their district, and a project may be approved even over their 'No' vote, so it is not appropriate that they be the earliest contact.

10. **Encourage developers to come to neighborhood associations early, even if they are only at the concept phase**. Neighborhoods will have to be trained on how to differentiate between an early concept and a final design (so as not to focus on the wrong details too early) and to understand that concepts may not go anywhere (so as not to burn neighbors out.) Both of those will require some outreach effort and a strong commitment from neighborhood associations.

11. **The city should budget more for Alder communications**, especially for mailings and for holding public meetings. This is a few thousand dollar investment in the public process that will pay for itself many times over.

12. **Time for presenters should be better managed at commission meetings**. Bringing multiple people to get 3 minutes per person is not effective. A sensible system would be something like simple projects get 10 minutes to present, and more complicated projects (perhaps determined by the chair or by city staff) get 20

or 25 minutes to present, to be divided as they see fit. That new limit should be a hard limit, though, and should not include questions. All but the most basic of questions should be held until later, after the public has also had a chance to comment and to raise issues that the commission should consider.

13. **The Council Chambers and most meeting rooms in the CCB and MMB should be updated and outfitted with modern technology**. Posterboards are quaint, but in the 21st century we should be able to easily show digital information on multiple displays. When applicants have 3D computer models, they should submit those to the city so city staff can prepare renderings to meet specific requests of commission members. Additionally, thanks to advances in technology like 3D printing, constructing physical models of buildings is now possible at fairly lower cost. It is now reasonable to require some projects to also provide a physical model of their building. The city should assemble a "data warehouse" of the existing built environment that it can provide to developers, so they can spend time modeling their proposed buildings, and not the buildings around their site and the topography. As part of the final approval, the city should require the developer provide a final 3D model of their building, to keep the city's inventory up-to-date. The city should also compare the submissions of the applicant's model (and any surrounding buildings they also include in their application materials) to the LIDAR survey data.

14. **The city should explore the concepts of Transfer of Development Rights (TDR) and of Land Assembly Districts (LAD.**[1]) Although not specifically improvements that the city could make to its approval process, both of them are tools that we could use to resolve some of the trickier problems that we routinely run into in Madison. You are likely familiar with the concept of TDR, however, the Land Assembly District may be new to you. Briefly, a LAD is like a Business Improvement District for parcel assemblage: once a sufficient number of property owners in a potential LAD approve the LAD, development in the entire LAD is decided by the LAD, and no one property owner is able to hold out from the assemblage. LADs would allow the city to be more proactive about how it wants to see development occur, instead of just hoping a developer is able to recombine fragmented parcels, and also giving property owners a say. It provides a middle ground between doing nothing and using eminent domain. I don't believe that LADs have been implemented anywhere in the United States, and there are obviously deep issues to consider, especially in a post-*Kelo* world. It's not clear that we would be comfortable with them. Still, this sort of examination is what Madison is known for, and even if it is something we ultimately never take up it is worth understanding.

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[1] See Heller and Hills in "*Land Assembly Districts",* 121 Harv. L. Rev. 1465 (2008) or Heller, Michael (2008) *The Gridlock Economy*

15. **It is time to consider the sustainability and environmental footprint of a project**, as that matters every bit as much to the community as the outwards appearance. I once waited through a UDC meeting where they debated the exact shade of purple that would appear on the side of the "Hotel Indigo." The shade of purple could have later been changed with a few hundred dollars worth of paint. The energy and water needs of the building, however, are not considered at all in our process, and yet they'll affect our community for 50 to 100 years – far longer than any of the original investors are likely to remain involved.

I am loath to consider calling for the addition of another review committee, but at the same time we need to find a way to be sure we're reviewing what really matters.

16. **Those involved with the approval process out to periodically review what they've done after a project is completed**. They may not be able to change it, but comparing how a project actually turned out as compared to what they expected should be informative. This is mostly for the UDC and for the Plan Commission, but the Common Council, Landmarks Commission, and other stakeholders like Neighborhood Groups and developer stakeholders should participate, too.

17. Finally, **it is important not to confuse the development of the built environment with economic development**. At the simplest level yes, putting builders to work is economically advantageous, and often, yes, a building development unleashes new economic activity after the construction stops. However, there are many years worth of economic development opportunity in Madison that that doesn't require a single brick to be moved anywhere. I realize the EDC was given this charge to create recommendations primarily because they are not the Plan Commission or the UDC, but I think we need to understand when what we're doing really creates new value and when it really doesn't, and not automatically equate the two developments.

The remaining part of my submission are remarks I made at a public meeting in September of 2009. They're pretty close to as delivered, I think.

Thank you for coming, I'll be brief, my name is Erik Paulson, I live over at Dayton and Blair

I was asked by the Capitol Neighborhoods Development Review and oversight Committee and by then-chair of the James Madison Park District Phil Hees to head up a steering committee for development proposals on the 200 block of E Mifflin. That primarily means I send a lot of email saying "well, can you meet on this night instead?"

I just want to talk a bit about what the steering committee does and doesn't do, and fill you in what we've got planned and how you can get involved.

First, what does a steering committee do? In Madison, developers who come forward have to be in contact with the relevant neighborhood associations. CNI usually responds by forming steering committee of interested people to interact with the developers and help create a neighborhood response. The idea is that developers and neighbors deserve a predictable process, and that process should improve the project.

Much of the steering committee's work is done before the project reaches the formal city proposal stage, but we do continue on through the end of the proposal. Alder Maniaci can explain the steps involved at the formal city proposal stage.

By the time of the formal city proposal stage, the steering committee owes the decision-making bodies a report that talks about issues with the proposal the neighborhood has identified, both good and bad, and how the committee has discussed them with the developer. It may or may not actually take a Yes/No position on the project, but either way, the important part is that the report includes our reasoning.

More important than the end product of an advisory statement, however, is that over the next few weeks and months we'll be able to offer feedback to the developers as the design evolves, identifying issues and helping with their resolution before the design reaches final stages, and in a more informal, flexible, and collaborative environment than having to testify at a city commission. The goal really is to help "steer" proposals to something that we want to champion during the formal approval process.

I also want to talk about what the steering committee is not. First, it's not a city commission with veto power. If Apex comes back with a concept for using the block as a 24-hour jackhammer test facility, I'll go out on a limb and predict that it won't get a very positive reaction from, well, anyone, but they have the right to take it to the city, regardless of what the steering committee says.

The steering committee is not meant to represent every possible group and interest. Specifically cited in the CNI protocol document are business groups that may want to weigh in, and I think it's a given for this project that historic preservation groups and Frank Lloyd Wright groups will weigh in as well. However, the steering committee doesn't presume to speak for them. That doesn't mean that the steering committee won't consider these issues, it can and it should because they're important to the neighborhood too. However, we expect that these other interests will weigh in separately.

Finally, the steering committee isn't your only way to weigh in on the project. Obviously, there is a chance tonight to share thoughts, and when more detailed proposals come forward there will be more public meetings. Also, beyond the separate groups I just alluded to, you can skip the steering committee and weigh in at the formal proposal stage or with Alder Maniaci. Again, I'll leave it to her to describe that process.

None of that is meant to deter you from participating with the steering committee however, and now's a good time to say that our first meeting will be next Tuesday night, September 29th, at 6:30pm at First United Methodist Church, at Wisconsin and Johnson.

You can participate by just coming to the occasional meeting, offering feedback and staying updated, or you can make a more formal commitment and agree to try and make as many of our meetings as you can, and be prepared to do some work outside of the committee meetings. Either way is fine, but we ask that you make that commitment as early as possible and hold to it.

Our exact meeting schedule and timeline will be driven largely in response to what we hear tonight, but we expect that we'll meet during the evening every other week, probably for the next few months.

We'll keep the neighborhoods updated through email, and we've created a blog where we'll post updates as well. The address is on the small handout, available in the back of the room if you missed it. We'll announce meeting dates there and via email, along with agendas and material.

If after tonight you've ever got any questions, please get in touch with me, JMPD chair Jim Steakley, CNI President Adam Plotkin, or Alder Maniaci and hopefully one of us will be able to help you out. I can answer a few quick questions now.