

MADISON DEVELOPMENT PROCESS

June 11, 2010

An ad hoc group of practitioners familiar with the City of Madison development approval process, which includes Tom Bergamini, Natalie Bock Erdman, Hank Gempeler, Alan Fish, Dick Wagner, Tripp Widder, George Austin, Susan Schmitz, Kris Euclide and Bill White have convened in person and electronically since the beginning of 2010 to discuss and critique the City of Madison development approvals process. It has been widely perceived, and is underscored by non-Madisonians seeking to do business here, that the Madison development approval processes are overly lengthy, fragmented, balkanized, unpredictable and largely impenetrable. The practitioners contributing to this report have been able to work their way through these processes and have comments on how the processes can be streamlined without compromising either integrity or input. The following summaries of the discussions leading to this report include comments from national and local developers and are intended to express the generalized views of ways to improve the approval processes.

1. **The Development Departments of the City Should Present a Constructive, Positive Attitude Toward Development.** There is a need to achieve a culture in the City Development Departments (and other areas as well) that promotes the many positive aspects of doing business in this City. There is a perception that other communities have a more friendly, can-do attitude toward development than does Madison. At a minimum, applicants should be treated courteously as investors in the City who are willing to develop, redevelop, and revitalize this City lest those investors go elsewhere. This constructive attitude must begin at the top with the Mayor, Common Council leadership, and department heads.

In addition, the Tax Incremental Financing and other Municipal Assistance Programs should be positive, available, and predictable in their approach and outcome. Currently, there is a perceived lack of predictability to these programs with the definite perception that an application is viewed by City Staff with skepticism, if not outright negativity. Applicants should be treated as investors in the City, because those investors could “invest” elsewhere.

2. **The Roles and Jurisdictions of Various City Boards, Commissions, Committees and Agencies (“City Unit”) Should be Clearly Defined and Understood.** Training and orientation should be given to new board members by the Chair of each City Unit, the Staff to the City Unit, and a representative of the City Attorney’s office regarding both the jurisdiction of the City Unit and the process for that City Unit. City Unit chairs should be trained in the means to control meetings and restrict questions and comments to issues that are germane. The inability of a member to attend several meetings in order to establish a quorum should be a reason for that member to resign. Also, members should be reminded that their personal or special interests are subordinate to the mission of the City Unit. Metrics should be developed to determine successes of the Board, Commission, Committee or Agency for the previous year (e.g. time frame for consideration of matters, length of meetings, number of referrals, etc.). Annually, the Mayor should require each City Unit to evaluate its performance for the previous year. Once

each year, the Chairs of Major City Units related to development, should meet with key development staff and the mayor's office to assess information, strategies, and plans for encouraging appropriate growth in line with city plans.

Each larger or complex project should have a project manager whose role would be clearly defined to help secure appropriate feedback on a timely basis from all affected constituents. This feedback would include Neighborhood process and other board agencies and committee consideration. This project manager would likely be a plan staff member or economic development staff member.

3. **Supermajority Votes Should be Critically Examined.** Supermajority votes are embodied in either ordinance or statute and are used now to overturn grants of conditional use permits, demolitions, budget amendments, local landmark designations, some historic district developments and verified petitions protesting a zoning map amendment. A list of the supermajority actions is attached as Exhibit A. The appropriateness and role of supermajority votes, which grant veto power to a minority, should be reviewed carefully. This is especially true where it may take a supermajority vote of the Common Council, the elected governmental body, to overturn a decision of an appointed body whose authority arises under a delegation from the Common Council. These supermajority votes are embodied in ordinance or statute and so would require careful balancing of the need to have predictability in governmental actions against the need to alter the decision of a lesser City Unit.

4. **The Role of the Neighborhood Plan Within the Comprehensive Plan Should be Clarified.** Are the plans mandatory documents, or are they advisory in shaping future development? Flexibility should be built into all plans to allow for unforeseen circumstances and opportunities. The interaction between Neighborhood Plans and the Comprehensive Plan should be regularly reviewed with Planning and Zoning Staff and with Neighborhood Groups with emphasis on the Neighborhood Plans' advisory nature to avoid confusion. It should be emphasized and clarified that Neighborhood Plans should not be automatically included in the City's Comprehensive Plan since they did not go through the same inputs and participatory protections as did the Comprehensive Plan. Recent state legislation (Wis. Act 372) confirms that even the Comprehensive Plan is a guide and not a regulatory tool.

5. **Neighborhood Input is Valuable, Provided Sufficient Input is Secured.** Property owners should be part of the neighborhood process as they have a valuable stake in the outcome of development. In addition, neighborhood association policy and political positions should identify how the "neighborhood" was defined and notified and how many individuals attended meetings in order to assure that the association positions actually reflect the widespread sentiment of the neighborhood and not the opinions of a few. Too often, a small minority will claim to represent all "neighborhood" interests when they actually do not.

6. **Advance Notices of Intent and Engagement in the Development Processes Should be Standardized.** All notices regarding proposed development should be sent at the time the development application is submitted. Often, development projects come together on a time sensitive basis so that a required notice 30 or 60 days in advance of the actual submission date often hinders a development proposal because the details are not yet known. Also, the process and formats for neighborhood consideration should be standardized to avoid delays and minimize the sense of fragmentation within the City.

7. **A Streamlined Approval Process Should be in Place for Smaller Projects.** Currently, a PUD for a two-unit duplex goes through the same review and approval process as a 150 unit owner-occupied condominium development, shopping center, or a research park. Simplified processes and input should be developed to make sure that impacts are known, yet small projects are not treated as if they were big projects. The new zoning code should include this streamlined process.

8. **Miscellaneous Items.**

(a) **The Lobbying Ordinance Should be Simplified.** Currently, not only are the public official and staff contacts required to be identified, but also the real costs to an applicant of engaging in the development process. The identification of costs have little intrinsic value in an otherwise transparent system. However, disclosure of actual costs signals to the outside world how difficult and expensive it is to do business in the City of Madison. Our neighboring communities do not require such disclosure.

(b) **Time for Presentation.** Applicants at the Plan Commission should be given at least 10 minutes, or an appropriate period, to holistically present the parameters of the project. If opponents to a project need a similar expanded timeframe to present the counterproposal, then that is acceptable also. The Common Council should allow only 3 minutes per speaker. These changes would streamline the ultimate approval at the Common Council and ensure that the Plan Commission is adequately informed.

(c) **Room 201 Needs Work.** Our neighboring communities generally have sleek, and comfortable legislative facilities. Room 201 needs some updating for comfort and technology. Upgraded visual technology and improved audio systems will enhance the public's participation in the process. A sense of pride and positive action in our community should begin with the government's physical setting.

ATTACHMENT A

"Supermajority" voting in Madison General Ordinances (2/3 vote required unless otherwise indicated)

[I've bolded where a previous decision can be *overturned* only by a supermajority vote ('appeal') . All others are in reference to where a supermajority is required for an original decision.]

02 - Standard Rules For The Government Of The Common Council (motions to extend time, modify rules, etc.)

- 2.04(19) Order of Business
- 2.05(1)(b) Introduction of Business
- 2.11 Previous Question
- 2.12(2) Division of Question
- 2.19 Resolutions Or Ordinances Appropriating Funds **3/4 vote**

2.26 Motion To Rescind

- 2.29(2) Citizens Right To Address Common Council
- 2.30(2) Public Hearings
- 2.34(1) Suspension Of Rules

03 - Officials, Boards, Employees And Public Records (veto power, appointments, removal of office, etc.)

3.03(2) Mayor

The Mayor shall have the veto power as to all acts of the Council, except such as to which it is expressly or by necessary implication otherwise provided...If the Mayor disapproves he shall file his objections with the Clerk, who shall present them to the Council at its next meeting. A two-thirds vote of all members of the Council shall then make the act effective.

3.30(2) Qualifications--City Officers, Members Of Commissions, And Employees

Residence: Each person eligible for appointment as a member of a City of Madison board shall be a resident of the City of Madison, provided, however, that this provision shall not apply to a candidate where, in the judgment of the Mayor and two-thirds of the Common Council, the best interests of the City will be served by appointment of a non-resident.

3.53(3)(d) Civil Service System

Personnel Board: A two-thirds vote of all members of the Council shall be required to remove any member of said Board from office prior to the expiration of his term in office.

04 - Finance (allocation of monies)

4.03 Contingent Fund **3/4 vote**

The Board of Estimates and the Common Council shall annually provide for a contingent fund of not less than \$100,000. No appropriation shall be made from said fund except upon an affirmative vote of three-fourths of all the members of the Common Council.

4.16(1) Reserve Fund

Municipal Reserve Fund: The sources of said fund shall be such monies, or securities, from any source whatsoever, as the Common Council may, by resolution, by a two-thirds vote from time to time direct to be paid into said fund.

4.16(4) Reserve Fund **4/5 vote**

All interest or income earned by said fund on its investments shall, when it accrues, be added to said fund to augment the same for the purposes for which said fund is provided, unless otherwise provided by a four-fifths vote of the Common Council.

4.16(5) Reserve Fund **4/5 vote**

Said municipal reserve fund, or any part thereof, may be expended for any municipal purpose with the consent of four-fifths of the members-elect of the Common Council.

09 - Licenses And Permits (approval of junkyard locations)

9.21(4)(g)2. Licensing And Regulating Junk Dealers...

Application For License: No license shall be granted under this section...provided further that in the case of licenses for junk dealers and motor vehicle salvage dealers, if 25% of the property owners within 300 feet of the site proposed as a junk yard have filed a verified petition opposed thereto, then no license shall be granted therefor unless the Common Council shall in its discretion by a vote of two-thirds of its members at such meeting authorize the same.

10 - Streets, Alleys, Sidewalks And Gutters (placement of mailboxes)

10.32(8)(b) News Boxes

Enforcement of the appearance, placement, etc. of mailboxes: Any person aggrieved by orders from the Economic Development Division may appeal to the Board of Public Works...the Board shall hold a hearing...within 10 days of the hearing, the Board shall affirm, modify, or reverse the orders of the EDD. A concurring vote of two-thirds of the voting members present shall be required to modify or reverse an order.

14 - Public Waters And Shorelines (prohibiting motorboat racing)

14.30(8) Regulation Of Boats *3/4 vote*

Motorboat Racing: Motor boat racing is prohibited unless the race course is approved in advance by the Parks Commission...The decision of the Parks Commission shall stand unless three-fourths of the members of the Common Council vote to reverse it.

16 - General Planning (appointment of alderpersons to City Plan Commission)

16.01(3) City Plan Commission

Appointment and Terms of Alderperson Members: The Mayor shall appoint three members of the Common Council to be members of such commission; and, at its annual meeting in April the Common Council shall, by a two-thirds vote of its members confirm any such mayoral appointments.

28 - Zoning Code (land usage issues)

28.12(10)(g)1. Administration And Enforcement *3/4 vote*

Map and Text Amendments: Action by Common Council: In the event that a written protest against the proposed map amendment is filed with the City Clerk and is duly signed and acknowledged by the owners (or registered electors) of 20% or more of either of the areas of land included in such proposed map amendment or modification, or by the owners (or registered electors) of 20% or more of the area of the land immediately adjacent extending 100 feet therefrom, or by the owners (or registered electors) of 20% or more of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such map amendment shall not become effective except by the favorable vote of three-fourths of the members of the Common Council voting on the proposed change.

28.12(11)(i) Administration And Enforcement

Conditional Uses: Appeal From Action By City Plan Commission: An appeal from the decision of the City Plan Commission may be taken to the Common Council by the applicant of the conditional use...The Secretary of the Plan Commission shall transmit such appeal to the City Clerk who shall file such appeal with the Common Council...The action of the City Plan Commission shall be deemed just and equitable unless the Common Council, by a favorable vote of two-thirds of the members, reverses or modifies the action of the City Plan Commission.

28.12(12)(h) Administration And Enforcement

Approval of Demolition and Removal: Appeals: An appeal from the decision of the City Plan Commission granting or denying a demolition or removal permit may be taken to the Common Council by the applicant for the demolition or removal permit...The Zoning Administrator shall transmit such appeal to the City Clerk who shall file the appeal with the Common Council...The action of the City Plan Commission shall be deemed just and equitable unless the Common Council, by a favorable vote of two-thirds of the members, reverses or modifies the action of the City Plan Commission.

29 - Building Code (modifying or reversing decision of Fire Chief/Director of Building Inspection)

29.18(3)(b)1. Board Of Building Code, Fire Code, Conveyance Code And Licensing Appeals

Decision on Appeals: The Board shall affirm, modify, or reverse the decision of the Fire Chief or Director of the Building Inspection Division. A concurring vote of two-thirds of the voting members present shall be required to modify or reverse said decision.

33 - Boards, Commissions, And Committees (term limits and Landmarks Commission "appropriateness" decision)

33.01(6)(b) Boards, Commissions, And Committees Procedures

Term Limits: No person, other than Alders, shall serve on any Sub-unit for a period in excess of 12 years, unless authorized by a two-thirds majority vote of the Common Council.

33.19(5)(f) Landmarks Commission

Appeal: An appeal from the decision of the Landmarks Commission to grant or deny a Certificate of Appropriateness may be taken to the Common Council by the applicant for the permit...Such appeal shall be initiated by filing a petition to appeal, specifying the grounds therefore, with the City Clerk within ten days of the date the final decision of the Landmarks Commission is made. The City Clerk shall file the petition to appeal with the Common Council. After a public hearing, the Council may, by favorable vote of two-thirds of its members, based on the standards contained in this ordinance, reverse or modify the decision of the Landmarks Commission if, after balancing the interest of the public in preserving the subject property and the interest of the owner in using it for his or her own purposes, the Council finds that, owing to special conditions pertaining to the specific piece of property, failure to grant the Certificate of Appropriateness will preclude any and all reasonable use of the property and/or will cause serious hardship for the owner, provided that any self-created hardship shall not be a basis for reversal or modification of the Landmark Commission's decision.

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