

CAPITOL

NEIGHBORHOODS, INC.
MADISON, WISCONSIN

November 16, 2010

Mr. Tim Cooley
Director, City of Madison Economic Development Division
Madison Municipal Building
P.O. Box 2983
Madison, WI 53701

Re: Economic Development Committee

Development Process Improvement Initiative – 2010 Draft Report

Dear Mr. Cooley,

The Development Review Oversight Committee of Capitol Neighborhoods has taken time to consider the Committee's draft report. Attached you will find our comments. We look forward to considering the next iteration of this report and working with the Committee in developing strategies to improve the process for review of development proposals.

Thank you for your consideration,

Development Review Oversight Committee

Capitol Neighborhoods

Peter Ostlind – Chair

Ledell Zellers

Bert Stitt

Erik Paulson

Joe Schnick

Fred Mohs

Bill Patterson

Scott Kolar

Tom Geier

Brenda Konkel

Adam Plotkin

Peggy LeMahieu

Development Process Improvement Initiative – 2010 Draft Report

The directive from the Mayor to the EDC was to consider Madison's development review process to insure that it is; efficient, predictable and uniform, and maintains existing high standards. The Mayor has stated he is looking for a comprehensive third party review of the process.

The tone of the draft report suggests that instead the EDC has prepared a review of the process from a strictly economic point of view. While it may in fact be worthwhile to examine the process from an economic perspective surely this is not the only criteria of importance. The directive was to maintain the current high standards which include other important considerations. A report which focuses solely on economics from the viewpoint of the development community does not serve the broader interests of the community.

The tone of the report is set on the cover with a quote from the Federal Reserve Board regarding 'metropolitan areas with stringent development regulations'. The quote has no direct relevance to Madison; there is no information about what might constitute stringent development regulations, no comparisons to other communities and nothing in the report to suggest that Madison has stringent development regulations.

The section on **The Case For Improvement** continues on in this tone with quotes and charts unconnected to the development review process. There's a suggestion that "some" rank the State of Wisconsin poorly as a business environment. So what does this report from the Wisconsin Policy Research Institute about a three decade decline in the State business climate have to do with Madison's review policy? We might as well include the statement that some rank Madison as the best place to live. (Money Magazine)

Similarly the statement that over 55% of the total area of the City is exempt from property taxes is presented without context. The average reader is likely to think that this means that 55% of the properties in Madison don't pay property taxes. Nothing could be farther from the truth. The 55% figure includes all of the road right of ways and parks within the City in addition to State, University and other exempt properties. There is no comparison to other communities so there is no way to assess any meaning from this statement, let alone what it has to do with the development review process.

There are a number of quotes in this section which are inaccurate or taken out of context. For example on page 7 there is a quote from a study published in the Journal of Housing Research.

"The time period from application to approval can be quite long in effect constraining the amount and timing of development through delays in the review and approval process. ..."

This study looked at the 75 largest metropolitan areas in the country. (Madison is not in this group) The quote comes from a section of the report where general comparisons are being made. The sentence preceding the quote included in the EDC draft report reads:

“In many jurisdictions, the number of months that it takes from application to approval can be quite short. In others, the time period from application to approval can be quite long, ...”

Selectively including quotes out of context to support a particular viewpoint does not lend credibility to the report as an unbiased review of the development review process.

The EDC report states its perspective most clearly on improving the review process with the statement “the most compelling benefit is encouraging investment in the city.” No where within the report is consideration given to other factors such as quality of life, reducing traffic congestion, promoting development patterns which minimize the cost of providing city services, environmental quality or any of the other aspects of development considered within the review process.

The balance of our comments are presented following the format of the draft report. The comments are grouped by section or by Implementation Option number as appropriate.

GUIDING PRINCIPALS

Proportionate inputs

The last section under this heading is not written as a principal. In this paragraph the focus seems to be on marginalizing “a small special-interest group of voters” when something may be “good for the city overall”. This paragraph goes on to say that this opposition is particularly likely when proposals “vary from adopted neighborhood plans” or require “zoning map amendments...” It is actually as relevant to note that the whole process starts with a “small special interest group” (i.e. the Developer) proposing something. The developer’s proposal would most naturally be opposed if, it is at odds with currently adopted plans and zoning. The report should stick to its mission and not diverge into denigrating stakeholders in the process.

Complete Information

The key statement in this section is that “There is no substitute for complete and transparent information”. The report should focus more on insuring that this sort of information is in fact available and less on how it is distributed. The means of distribution is a tool that can be used within the process but distribution is only a tool. To suggest that this tool will significantly decrease the time involved in the process seems overly optimistic. Just how short a time frame can interested parties be confined to for reviewing information? For neighborhoods and residents who get involved in their spare moments just what would be the minimum timeframe suggested to allow for adequate review once information is available? It is more relevant to note that the preponderance of delays can be attributed to the lack of complete, timely and accurate information from developers.

Empowerment

Who are “the right people” spoken of here? And what actually is the thought trying to be conveyed?

RELATIONSHIP OF NEIGHBORHOOD, COMPREHENSIVE, AND SPECIAL AREA PLANS

Comprehensive Plan/Neighborhood Plans

To be meaningful the Comprehensive Plan must be followed and should be a significant element of the review process. The development process should recommit to being sure that development proposals are not approved if they are inconsistent with the specifically articulated provisions of the Comprehensive Plan. This is particularly important since predictability is nominally of great concern to all parties to the development approval process. **Development Approval Process Flow Charts**

On page 15 of the report the timelines shown are typical current time frames and ones that staff feels are doable for the formal process and plan signoff/permitting sections. Yet the graphics suggest that the preapplication phase is included within these timeframes. This is not reflective of reality as obviously project development, let alone neighborhood engagement, doesn't occur within these time frames.

PRE-APPLICATION PHASE

A. Goal: Establish predictable expectations for neighborhood & staff review of development proposals

2.b(ii) Set minimum meeting requirements for Applicant & Neighborhood Associations.

While it will be an improvement to require meetings with a neighborhood it is the quality of the meetings which is more important than some minimum number. There is a wide range of types of development proposals which require a range of minimum meetings to effectively aid the process. It is important that such a minimum requirement does not become a defacto position for development teams to adopt of "we've met the minimum number of meeting times, therefore we are done with the neighborhood."

2.b(ii)1 Provide City facilitation if needed and if Neighborhood Association agrees to guidelines.

What guidelines would this be that the neighborhood needs to agree to?

Would other parties to the discussion also need to agree to these guidelines?

B. Goal: Inclusive, fair and uniform neighborhood input into development projects

This goal and the implementation options should apply to all interested parties in the development review process, including city recognized business associations and other stakeholders.

Neighborhood Associations should be allowed to represent residents. There should be no requirement for Neighborhood Associations to include business or commercial property owners any more than business associations should be required to include residents.

Planning staff assistance to stakeholders in collecting feedback will be useful for some. Each stakeholder should have the opportunity to present their feedback themselves. Staff should not be relied on to filter feedback on behalf of any stakeholder unless that stakeholder does not have the resources to present this information on their own.

Stakeholder disclosures should include information about any member of the group who has a financial interest in the proposal. Lack of such disclosure has been a significant problem.

Additional Preapplication Phase Goal Recommended

An additional goal should be added to this section: "Increase the preparedness of the Applicant". Applicants should have knowledge about applicable plans and the neighborhood process. Also, an increase in preparedness will assist the applicant in bringing information forward in a timely, accurate and complete manner.

APPLICATION, REVIEW & APPROVAL PHASE

E. Goal: Compliance with Commission / Committee conditions / recommendations

The goal is unclear and does not seem to directly relate to the implementation options that follow. Is the goal to improve Applicant compliance with conditions and recommendations?

Implementation options

2.a Design of Façade Grant projects should be reviewed / approved by staff.

When City funds are given for improvements to the built environment the oversight of the UDC is appropriate.

City commission review is particularly relevant for façade grants which are located within design zones or historic districts.

F. Goal: Reduce number of development approval entities

This goal seems misstated. There does not appear to be general support for eliminating commissions. A goal that each commission should have clear standards and criteria for their reviews would better serve the process.

The existing situations where a super majority of the Council is required to over ride a commission decision should be maintained.

Alternative implementation options

2.e(i) in lieu of granting "initial approval" and requiring projects to come back for final approval.

The current process allows for consideration of mass, scale and site issues before the time and effort is spent developing the design to the level required for final approval. For many proposals this is a more efficient use of time and effort. Other less complicated or controversial proposals currently can currently proceed with both initial and final approval in one session.

G. Goal: Streamline and clarify Commission's Review of Applications

Implementation options

- 1.a Consideration should also be given to providing a "not to exceed" speaking time to other organized stakeholders, typically a neighborhood association, who bring a considered review of the proposal to the commission.
4. Along this line a policy that the Plan Commission specify how a request for conditional use meets the zoning requirements would be useful and would minimize the grounds on which an appeal could be filed.

Establish and maintain a deadline prior to commission meetings for submission of new material by the applicant. Have a mechanism whereby stakeholders are notified in a timely manner that new material has been submitted.

POST-APPROVAL PHASE

J. Goal: Better coordinate and expedite City agency sign-offs on approved development plans

Implementation options

1. Development Assistance Team reports should be put on Legistar.
2. Presumptive approval is inherently flawed. There would likely be unintended consequences from this not the least of which would be more rejections of proposals which had not provided all of the required information. This would in fact lead to delays rather than reducing the review timeframe.
3. Feedback should be gathered from all stakeholders not just the applicant.

ADMINISTRATIVE IMPROVEMENT

K. Goal: Neighborhood Plans, Training & Feedback

Implementation options

1.a(i) This recommendation should include a recommendation for City funding for these plans. Some neighborhood plans are currently funded by the neighborhood. Some neighborhoods simply do not have the financial capacity or knowledge base to lead an initiative to develop a neighborhood plan.

1.a(iii) What is meant by including "economic feasibility" in neighborhood plans? Is this intended for every idea in a plan? What would be used for the underlying assumptions for the economic analysis? Would this be added as a component to the Comprehensive Plan?

2.b There is a recommendation for “mandatory” training for neighborhood and business associations. Who from these groups would be required to take the training? Would this mean if an individual hadn’t taken the training that person couldn’t comment or be involved in the process?

3.b What performance is being incentivized? How is good performance defined?

4. Other stakeholders including business and neighborhood associations should be involved in the annual summit.

ADMINISTRATIVE IMPROVEMENT

L. Goal: Development Guidelines, Website & development Assistance Team

Implementation options

5. The appeal should be open to the applicant, residents, neighborhood associations and other participating organizations.

M. Goal: Physical facilities to facilitate development review process

2. Other rooms in MMB should also be renovated to insure that all can see and hear the presentations and discussion.

N. Goal: Review, Set Deadlines, & Adopt Remaining Recommendations from Previous Reports

Since the matrix is not included in the draft report it is not possible to comment on the recommendations prior to release of the final report. This is not conducive to public input.

APPEDICIES

The appendix titles suggest that there will be specific recommendations within the appendices. Since the appendices are not included in the draft report it is not possible to provide comments prior to release of the final report.

ADDITIONAL COMMENTS

The comments presented below were initially provided in our August 6, 2010 letter to the committee. These comments do not appear to have been considered in the draft report. We believe that these are important points for consideration in reviewing the process and should be incorporated into implementation options to provide decision makers with a full range of options. A number of these recommendations are not necessarily actionable items but rather speak to the attitudes participants bring and the tone of the discussions. The report will enhance the review process by highlighting expectations for participants.

1. In discussions with outside developers Alders, staff, neighborhood representatives and the development community will best serve the future health of development in Madison if all focus on the positive aspects of developing in Madison and the benefits derived from engaging the community in the review. We will do well to eschew perpetuating the image that Madison, as a community, makes development difficult.
2. The specific economics of any given development proposal are not currently part of the review process nor are they relevant to basic planning considerations. (The exception would be proposals requesting economic assistance from the City.) While neighborhood associations, Commissioners, staff and Alders will be cognizant of development economics, it is neither their role nor part of the City review process to ensure the economic vitality of any proposal.
3. If economic considerations are to be made part of the review process then it would make sense for the city to add one more appearance; that being before the Economic Development Commission, with full and auditable disclosure as to financial information being represented by the developer. The use of unsubstantiated claims of economic hardship has long been a matter of significant concern to neighborhoods. There have been occasions when developers claim economic hardship to justify their preferred approach to projects. These claims do not currently have any requirements for auditable substantiation.
4. City Staff, Commissions and Neighborhoods will enhance the ultimate well being of our community by welcoming development teams and maintaining a receptive stance in considering proposals. At the same time development teams will better serve their own interests when they understand that existing zoning plans or districts have important functions in providing efficiency, predictability and uniformity.
5. A constructive attitude on the part of staff, commissions and neighborhoods does not equate with acceptance of every development proposal which may be brought forth. Questions intended to provide complete information and a full understanding of a proposal are both reasonable and important.
6. Development teams get better results when they are open to discussions about the details of their proposal and expect that all aspects of a proposal may not receive universal support.
7. Development teams must prepare themselves by studying and getting clarification of neighborhood processes. They need to be prepared to engage the neighborhood, understanding the neighborhood structure, process for review of proposals and relevant plans for the development site.
8. All parties will better serve themselves and the community if they strive to maintain a civil dialogue that is considerate of all points of view. Understand that there will be differences of opinion and that it is counterproductive to everyone's interests to attempt to silence objections or require unanimity.
9. Commissioners do not serve the community well by only representing their own particular interests or those of other special interests (except for appointments which are reserved to represent a particular group). The process is not well served by Commissioners who may have to recuse themselves on a regular basis or are not able to regularly attend meetings. The process is also not well served by Commissioners who fail to disclose conflicts of interest and who participate in the discussion and vote despite the conflict.
10. All parties of the review process are well served when the presentations and discussions at Commissions are well focused within the particular parameters and standards of the Commission. Commission Chairs play an important role in this regard to focus the discussion on

issues that are germane to the Commission. Staff, development teams and neighborhoods are also responsible for keeping their input focused on the specifics of a given Commission.

11. Commission discussions which consider proposals in direct comparison to the given standards for review will enhance the review process. Commission decisions that are framed in the context of these standards establish a basis for the community to assess future proposals and aids in providing predictability.
12. In addition to the compilation of specific zoning text in 'Standards for Review of Certain Types of Development Proposals', that Planning Staff has prepared, a layman's version would be useful for speakers. This would be an aid to help focus the public's comments on the specific criteria to be used for Commission decisions.
13. It will serve the development review process if each year the Chairs of Commissions related to development 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.
14. All parties providing input to Commissions must be clear and transparent about who they represent and how the statements being made were formulated. Separate standards for neighborhood associations or any other organization related to justifying their integrity or ability to represent their chosen group will not serve the well-being of the community.
15. When proposals are asking for City financial assistance or 'higher zoning', such as additional floors for exceptional design within Design Districts, these proposals must be held to a higher standard. The standards must be articulated as clearly as possible to provide assistance to Commissions in considering each proposal.
16. Neighborhood Associations should strive to involve as many residents as possible in considering development proposals. Others need to recognize the voluntary nature of members of Neighborhood Associations and the limited number of people who choose to become involved. The absolute number of residents involved in a neighborhood's consideration of a development proposal does not inherently add to or subtract from the value of the input they bring to the process.
17. Neighborhood organizations will do well to avoid taking 'positions' on development matters and rather offer "Advisory Statements" that reflect the range of thinking and preferences. This approach does not exclude the possibility for any 'contingent' to independently and aggressively represent their position(s) on a given development. It does ensure that the neighborhood organization fairly provides the spectrum of views of residents while allowing the same kind of 'lobbying' that the developer undertakes.
18. Costs of development review meetings requested of neighborhood organizations by developers must be borne by the developer making the request: Mailings, room rentals, audio/video equipment etc. Neighborhood organizations do not typically have large budgets and it doesn't make sense that they be required to underwrite the costs of activities they do not initiate.
19. Elected Alders have the responsibility to reach out to all interests in their district. The Neighborhood Association represents the interests of the resident neighbors and are organized and governed according to the wishes of their membership. The City should not infringe on the rights of the neighborhood organization to determine their self-governance.
20. Plans are not intended to be static or rigid documents. Plans often offer ranges within their guidelines to allow for variation of conditions and ideas. Flexibility for plans to adapt to changing conditions can be useful so long as it does not undermine the inherent intent of planning to provide guidance towards a predictable future.

21. When a proposal is seeking multiple approvals which have different approval standards it will work better if the items are considered individually. This can focus the discussion on the review standards and allow speakers adequate time to speak to these specific issues.