

Plan Commission
Comments on Edgewater Public Use Agreement
1/10/11

1. Same old story...not releasing information in a timely fashion. The new draft of the Use Agreement was not completed and posted until sometime after 4:30 last Thursday. It was not available in time for review by interested parties prior to the scheduled neighborhood meeting on 1/5/2011. While the developer said that the agreement would be substantially similar to the earlier posted draft, the city was not sufficiently comfortable with the updated draft prior to the neighborhood meeting to provide it to Alder Verveer or interested neighborhood residents. There were sufficient problems or concerns to keep it under wraps. This lack of availability of documents is a continuing trend exhibited by this developer. Given the inaccurate information provided by this developer in the past, not having access to the new draft agreement and not being notified of its availability once it was posted, leads me to ask that you refer this item to your next meeting to allow for adequate review time. The use agreement will have substantial impact on the MH neighborhood. Given the extended time it took the city and the developer to work through the document, the courtesy of at least two weeks of time for this review should be extended to the public.

2. From a cursory review of the use agreement, it appears that the public is not adequately protected. And given the constraints in the use agreement, the public is not getting \$16 million of value.
 - a. Over and over again is the phrase "the manager in its sole, reasonable discretion". And yet this is not defined. Given that there was such controversy over the apparently simple concept of volume, it is of grave concern to leave so many of the substantive aspects of this use agreement up to the interpretation of this developer. The public is not being protected.

- b. Given the oft repeated use of the phrase “the manager in its sole discretion”, what use really is the dispute resolution provision (section 21)? If so many key aspects are to be left up to the manager, the city and the public are left out in the cold with no recourse. The public is not being protected.
- c. Next is section 17. 17(a) which allows the developer to walk away from its responsibilities for maintenance if the Manager decides that damage renders all or a substantial portion of the Public Access Components “incapable of being repaired”. The public is not being protected.
- d. “Temporary” structures can be put up an indefinite amount of time before an event and not removed for an indefinite period of time after. And there is no restriction on size. The view of the lake which is and has been so important can be substantially blocked. The public is not being protected.
- e. And finally, there is the claimed public space. The developer told the public over and over that the public would always have access. However always doesn’t really mean always. For 25% of the prime weekend days, the “public” space can, at the hotel’s discretion, be TOTALLY closed for private, luxury hotel events. And the rest of the time up to 80% of the “public” space can be reserved for private...public unwelcome...luxury hotel events. The public is not being protected.
- f. There is a nod to the community...by providing for the community to schedule the space. However, the community has half the number of days available for scheduled events as the number of days the terrace can be closed for private events. And unlike the developer’s earlier promise to allow for outside catering services to be used, now the expensive Edgewater food service must be used. The public is not being protected.

If the city is giving \$16 million to this developer, at least have a use agreement that protects the promises made to the public.

Ledell Zellers