

"John Schlesinger" 10/29/2008 04:56 PM

To
cc
Subject Planning Department Action Plan

All:

Excellent presentation yesterday. You really captured most of the important points for the action plan in general and the issues surrounding DR in particular. As mentioned in an earlier email to John, when the time is appropriate, you should make sure there is senior staff participation from DBI, so issues surrounding permit tracking, recommendations from the BPR report, and other issues having to do with the MOU you have with DBI are addressed. When senior planning staff participated in the BPR workshops, greater clarity was brought to a lot of the conflicting issues between the two departments.

Attached is a mark up of your proposed discretionary review visio style chart, for your consideration.

A few observations:

1. I have added the clarification (or meeting, if there is a demand to include this) box, which would allow the RDC to consult with the DR requestor and/or project sponsor. This would prevent any misunderstanding of either the project sponsor's documents and information or the DR requestor's complaint. As you know, so often material gets to the commission that then has to be deciphered, since it has not been properly vetted. If you are relying on staff to deal with these materials in a more administrative manner, this intermediate step is necessary. Also, it gives greater transparency to the process for both the project sponsor and the DR requestor with their consultants (we know there are several people who do this either for project sponsors or DR requestors and will demand to be heard).

I feel strongly that however this intermediate step develops, this should not be advertised as a mediation session or settlement conference. Having led the architectural mediation services for DR requestors and project sponsors under the auspices of the AIA during those overly dysfunctional days of the late 1980's and early 1990's, before the enforcement of the residential design guidelines, I recognize that there are separate skill sets required to conduct these sessions properly. When not done properly, it only hardens the positions on each side and further burdens the time spent by the project planner and the Department. When done properly, it is used as an information gathering session, with observations made by the Planning Staff, so each side knows what the issues really are. Very often this can be done via email, rather than having to have a meeting. Let's keep the burden on parties meeting with each other on the shoulders of the project sponsor and DR requestor, rather than dragging the Planning Department into this mix unnecessarily.

2. There were some conversations regarding the left hand side of the chart, where the Department is recommending that some cases do not meet the standard of extraordinary or exceptional circumstances and should be approved. Others felt that there would be significant political push back on a process that does not automatically replace the planning commission

hearing process with a public hearing before a hearing officer for any case that has issues within the purview of the Department. The complaint will be their only avenue to a hearing process would be the Board of Appeals. I feel that only allowing the RDC to approve projects without a hearing officer for those that are beyond the purview of the Department is too timid. The RDC should be given the authority to approve projects that are not exceptional or extraordinary. The Board of Appeals is the proper venue for appealing the Department's (or in this case the RDC's) administrative decision. You will notice that I have added the box for the Board of Appeals, so it is clear that this may be part of the DR process.

3. There needs to be a "loop back" for those projects that have been revised by the project sponsor and becomes an approvable project. This prevents the chart from showing that the only path for projects that have been changed must be sent to the hearing officer. Failing to do this would put an undue burden on the hearing officer for projects that he/she should not have to see, once it meets the threshold set by the Department and the RDC. This is why I am showing an arrow from the box that shows the planner working with the project sponsor back to the clarification box.

4. There is a potential for the project sponsor to have to revise the project 3 times; First for the RDC, second for the Hearing Officer and third for the Planning Commission. This could result in a process that requires more revisions based on instructions by different parties (who may give mixed signals) than what we currently have, where a planner requests revisions and the project is forwarded to the Planning Commission for final determination. There was a recommendation that the commission be limited to the choices already explored by the project planner or the hearing officer. On paper it may be a good idea, but I can't see the commissioners relinquishing their right to modify a project beyond what has already been recommended, particularly those with architectural training. To avoid this three step design process, where there is even less certainty for the project sponsor, there has to be a working relationship established between the Hearing Officer and the RDC, to ensure that certain criteria are met. Much like what happens when Planning Commissioners weigh in on projects prior to a commission hearing, the Hearing Officer should be able to consult with the RDC and make sure certain principles have been met, without jeopardizing any Brown Act or Sunshine Law issues. Hopefully this would result in less cases requiring significant revisions by the Hearing Officer and focusing the substantive changes occurring at the RDC phase. I have also added language to the box where the RDC "makes" recommendations, rather than documents recommendations, based on criteria for exceptional and extraordinary circumstances. This is stronger than the way current staff reports are delivered to the commission, with more specific benchmarks.

Regards,

John

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