

Attachment IV Written Comments, *received after case report was issued on 12/4/2008*

Dear Commissioner Olague:

I strongly support the Planning Department's efforts to reform the Discretionary Review process. The proposed improvements are well-designed, comprehensive, and will be a benefit to all. The proposed improvements to the Planning Department's internal review will provide a more predictable and consistent process for permitting and will minimize the arbitrary and political nature of the current DR process.

Commissioner, to the extent that you can influence the timing of agenda items on December 11th, please place the review of proposed DR reforms at around 6 pm or 7 pm rather than earlier or later in the agenda. This issue affects a lot of working families with small children; if the item is too early, working people will not be able to come; if it's too late, families with small children will have to leave before the issue is heard.

Let me put a more personal angle on the issue. As a San Francisco homeowner whose planned renovation was subjected to discretionary review, I have very strong opinions and feelings about how detrimental and destructive the current process is to families, neighborhood, and taxpayers in San Francisco.

First of all, I want to clarify that I have no objection to the general concept of discretionary review. My specific objections to the current process are as follows:

P The adverse impacts (time, cost, emotional strain) of discretionary review fall disproportionately to the homeowner who is attempting to remodel, while the DR applicant experiences minimal adverse impacts from participating in the process. The current system is skewed strongly in favor of the DR applicant, and in favor of lawyers who advise these applicants on how to exploit every delay and loophole in the system.

P The discretionary review is only the first step in what can become a much longer, protracted, and extremely costly appeals process. By letting indefensible cases in through the DR window, those cases are also being allowed to exploit the entire appeals process, which can include the Board of Appeals and the Board of Supervisors. Once a DR applicant is in the process, even if the case is completely indefensible, the applicant can launch a multi-stage appeal process, adding significant incremental time and cost burden to homeowners who are trying to remodel.

P The current process creates several negative "externalities" that impact not only the homeowner, but also the DR applicants, the affected neighborhood, and all SF taxpayers.

Here's how our case unfolded. Our neighbors paid a nominal fee to launch the DR process. To do this, they did not have to prove that our remodel potentially violated any aspect of the residential design guidelines. In fact, they probably did not think they had a winning case, but they knew that they could at least delay us. Thus began the "war of attrition" between us and our neighbors that became increasingly ugly. At every step, even without a defensible case, it was a trivial exercise for our neighbors and their lawyer to trigger the next appeal, the next round of delays. For us, however, each strategy they employed cost us dearly. My opinion of the city's review and appeals process soured

over time as I calculated how little the fight was costing them, and how much it was costing us. It felt increasingly unfair and arbitrary.

By exploiting the DR process and all of the subsequent appeal steps, our neighbors were able to delay our project by 2.5 years and impose over \$120,000 in legal fees upon my family. Yes, a family. Not developers. That \$120,000 comes directly out of our son's college education and our retirement savings. In a sense, then, by making the whole ordeal so painful and costly for us, our neighbors might be able to declare "victory," even though our project was ultimately supported by the Planning Department, Planning Commission, Board of Appeals, and Board of Supervisors (yes, we were forced to go the whole way).

But here's why the process is costly not only for the families who are trying to remodel their homes in accordance with residential design guidelines and constitutional property rights. The "externalities" imposed on our neighborhood and the city at large by our case included the following:

P Our local supervisor, Bevan Dufty, and his legislative aide spent hours and hours on our case – conservatively a total of 20-30 man hours. Even worse, those of us on both sides of this process have been left feeling very disillusioned by our local political representation. I don't want my supervisor counting votes and picking sides in a neighborhood brawl – I want him representing all of us on broader, more important issues. On this, I think my neighbors and I can agree.

P The Planning Commission and the Board of Appeals were forced to hear our case (5-2 in our favor at Planning Commission, 4-1 at Board of Appeals). Both hearings were extremely lengthy because both we and the DR applicants brought out numerous speakers; we were all advised that the outcome of the hearings would have less to do with the merits of the case than with the number of speakers we were respectively able to bring out.

P The Board of Supervisors was forced to hear our case – and it took up two hours of their meeting plus several hours of preliminary meeting time with those of us who were lobbying them on both sides.

P Our neighborhood has been through a protracted, ugly process that has damaged the tone of the neighborhood for an unforeseeable amount of time. Some of our neighbors have treated us so badly that I have actually feared for my one-year-old son's safety. And some neighbors who support us have been fearful of retribution if they dare to speak out on our behalf. Everyone has been drawn into this, and it has lasted two and a half years. No one should have to spend so much time going through such an ugly episode. There has to be an easier way than this.

Here's a final thought for you as a Commissioner – and for opponents of reform – to consider. My husband and I would have preferred an immediate "no" from the Planning Department rather than an eventual "yes," 2.5 years and \$100,000 later. A quick "no" decision would have led us to abandon our remodel and buy another house. The problematic math for us was that, as each lengthy round of the process unfolded and as we incurred the high associated legal, architectural, and consulting fees, at each step it

was more logical from a cost and risk perspective to continue the fight than to give up. Pretty early on, we realized that the only possible way to mitigate the costs of the process was by winning the right to remodel. Even though we'd never get back the \$120,000, at least we wouldn't lose even more by also abandoning the remodel and having to go buy a more expensive house. Economically, we were badly wounded by the fight, but are still better off today because we stuck it out and won instead of walking away.

And that concludes my personal perspective on the proposed reforms. I greatly appreciate the Planning Commission and Planning Department being proactive in improving the DR process. Please approve the Planning Department's proposed improvements.

Sincerely,  
Kristin Hansen