

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

----- Forwarded by John Rahaim/CTYPLN/SFGOV on 12/11/2008 09:37 AM -----

**Steven Aiello**

[REDACTED]

12/11/2008 09:08 AM

To

[REDACTED]

cc

[REDACTED]

Subject SUPPORT PlanDept DR Reform proposal

Good Morning President Olague and Commissioners,

I strongly support the Planning Department's pending proposal for DR Reform, and look forward to testifying in favor of it later today.

I participated in the last round of DR reform back in 2004, and submitted to the Commission a suggestion for policy changes (attached for reference). Most of what I wrote back then is now moot due to the Commission's adoption of pre-application, simple v. complex, and fee reduction. However, one section discussing possible threshold definitions for "exceptional & extraordinary" may hold some relevance for your upcoming review, and I have copied it below for easy reference.

Thank you for considering this important reform to the SF planning approval process, and please approve the Department's proposed DR reforms.

Very Truly Yours,  
Steven Aiello

**Steven Aiello**

[REDACTED]

**ATTACHMENT 3**

1. **DEFINITION OF "EXCEPTIONAL & EXTRAORDINARY" CIRCUMSTANCES:** The goal is to eliminate confusion in the definition of "exceptional & extraordinary". Currently, the policy definition shifts with each project reviewed.

a. Clearly define and consistently enforce a standard definition of “exceptional & extraordinary”. A major issue driving the number of DRs filed, and their attendant costs, is the lack of a clear definition of the threshold issue, “exceptional & extraordinary”, required for access to the Commission’s discretionary power over Planning Code compliant projects. Defining this threshold will have benefits:

i. Eliminates confusion on the part of the individual considering a DR filing. The lack of a clear definition allows an excessive range of individual interpretation as to what is “exceptional & extraordinary” and encourages Voluntary DR initiators to proceed even though they have little chance of ultimate success before the Commission;

ii. Provides clear direction to Staff planners in preparing and supporting their determinations. For those DR initiators who proceed according to their individual interpretation, a clear standard will assist staff in analyzing the merits of the case, and provide clear precedents for the Commission in deciding the case, in light of past cases.

b. Possibly define “exceptional & extraordinary” as projects outside of the AIA criteria for “Simple” DR. In its letter of April 27, 2004, the San Francisco Chapter of the American Institute of Architects proposes that if a “simple v. complex” method of rating DRs is adopted, then the “simple” category be clearly defined to include ordinary items and issues, such as principally permitted uses, private views, and new construction or additions that do not exceed the height and depth limits of adjacent buildings. The “complex” category would include all other projects not subject to the “simple” criteria.

If the Commission decides to go the route of “simple v. complex” policy reform, then the criteria developed to define the respective categories can also be used to define “exceptional & extraordinary.”

By definition, if a project falls under the “simple” category, then it is not likely to be “exceptional & extraordinary”. Conversely, a “complex” project is more likely to fit within “exceptional & extraordinary”.

c. Consider an alternate definition: the *Ordinary* standard. The Residential Design Guidelines are based on an architectural concept known as *pattern language*, first developed by Christopher Alexander (et al), Emeritus Professor of Architecture at UC Berkeley, in his book “A Pattern Language”, published in 1977. The general thesis is that the physical patterns of our built environment can and do affect how we perceive and utilize the constructions therein, and that the art of design is to promote positive patterns and discourage negative ones.

Instead of wrestling with how to define “exceptional & extraordinary”, perhaps an *Ordinary* definition would be easier to achieve. An *Ordinary* definition would include those positive design patterns, both traditional and contemporary, already established in the new Residential Design Guidelines, effective January 1, 2004. Projects determined by Staff to be compliant with the RDG, would fit within the *Ordinary* definition, and thus not rise to the level of “exceptional & extraordinary”. Too often, DR disputes center on overly rigid individual interpretations of the RDG, and devolve into an aesthetic battle over which beholder’s eye sees more beauty.

Similarly, the *Ordinary* definition could be used to define recurrent patterns of contention, not directly related to the building itself, but indirectly affected by the building. These could include: private views not protected by easement, issues of residents not located on the block in question, construction noise, and light and air to rear yards. Typical DR cases falling under an *Ordinary* standard would unlikely be “exceptional & extraordinary”.

# ZERO DESIGN COMPANY

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P. Steven Aiello, Owner

The San Francisco Planning Commission  
1660 Mission Street, 5<sup>th</sup> Floor  
San Francisco, CA 94103-2414

**RE: DISCRETIONARY REVIEW POLICY & FEE RECOVERY REFORM**

May 17, 2004

Dear Commissioners:

As a concerned citizen, homeowner, and professional designer whose work is subject to the permit approval system and discretionary review, I offer the following policy suggestions, in an effort to support you in making effective and fair reforms to a broken process and system.

My primary focus in this policy proposal is the reform of the DR fee recovery system. I recognize, however, that fee recovery is inevitably tied to the policy side of DR, and the other policy reform issues currently under discussion. I have therefore also included suggestions for reforming the policy side of DR, and possible methods for implementation.

Striking the right balance between both sides of DR is vital to improving the health of the Planning Department, the morale of the Staff, the integrity of the Planning Code, and the pressures on the Commission. The right balance is also especially vital for protecting both the public interest and the private participants in the DR process.

In essence, I urge that the Commission return to its September 25, 2003 directive to the Department to fully enforce existing Planning Code Sections 352(b) and 350(c), and, as provided in those sections, charge Voluntary DR initiators the full time and material costs for staff planners to process the private DR application.

Combined with other prudent changes to the policy side of DR, derived from and based on the new Residential Design Guidelines, I believe that the overall cost of processing privately-initiated, Voluntary DR applications will be lower than current costs for the Department, and thus the DR initiator, if full cost recovery is implemented.

As the Commission knows well, the reform of discretionary review is highly contentious, very complex, and involves many legitimate competing interests to be considered, and, ultimately balanced for effective reform. Please refer to the attached pages for my detailed suggestions for improving the entire process. They cover:

- Attachment 1: Positions on the Current Reform Proposals for Policy and Fee Recovery
- Attachment 2: Suggestions for Trial Period, DR-master, Mandatory Benchmark Review
- Attachment 3: Suggestions for Definition of "Exceptional & Extraordinary" circumstances
- Attachment 4: Position on Fee Recovery Reform

My proposal has three main parts designed to reinforce one another. However, they can be independently implemented and still bring meaningful reform to the current system. I hope this information is of service to you in your difficult task ahead. Please call with any questions, comments, and clarifications you might have. Thank you for your time and attention!

Sincerely,

Steven Aiello, Owner  
Zero Design Company

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P. Steven Aiello, Owner

## **ATTACHMENT 1**

### **CURRENT FEE RECOVERY PROPOSAL FOR DISCRETIONARY REVIEW COSTS:**

I know that the Department needs funds to invest in long range planning and a modern computer infrastructure, and I support the proposal to allow a reasonable application surcharge on all building permits reviewed by Planning for these items. Proper funding of these items will allow the Department to fulfill its mission of planning for the City's future, and serving the public. These are true public interests.

A similar surcharge is also proposed to fund the Department costs for privately-initiated Voluntary DR applications. I strongly oppose this "DR surcharge" for the following reasons:

1. All project sponsors will be charged for a process, frequently political in nature, that they often do not control, most are not subjected to, and all wish to avoid;
2. Project sponsors will, in effect, be funding the opposition to their permit application;
3. Non-contentious projects will, in effect, be subsidizing contentious projects;
4. It is based on the faulty idea and political myth that *only* project sponsors create the "DR-problem";
5. The sections allowing full DR fee recovery from the DR initiator were designed to protect the Commission's sensitive discretionary powers from abuse;
6. It creates for the public the impression that DR is a normal situation of negligible cost.

### **CURRENT POLICY REFORM PROPOSAL: COMMUNITY OUTREACH & PRE-APPLICATION MEETINGS:**

I generally support the idea of a Pre-Process if it serves to reduce the number of DRs and the amount of staff time required to process them. However, I note that the following issues need attention:

1. An already difficult permit approval process becomes longer. Mandatory Community Outreach and Planning Pre-Application meetings will delay the official beginning of the permit process: filing an application with DBI;
2. The contentious atmosphere surrounding projects that end up in DR is often the result of unrealistic expectations or differences in personal philosophy by one or more participants regarding the others: the project sponsor or neighbor or planner;
3. DR cases often involve allegations of all sorts and highly personal disputes between neighbors;
4. The Community Outreach Meeting places a burden on the Project Sponsor, with additional cost, without providing a recognizable, measurable process benefit.

Regardless of the above issues, I have found that a Pre-Application Meeting with an experienced staff planner can provide me with valuable information regarding planning issues that can affect my proposal and complicate the approval process.

If the Commission decides to implement the Pre-Application and Community Outreach Meeting requirements, then it should adopt the recommendations offered by the AIA SF chapter for simplifying the current staff proposal.

### **CURRENT POLICY REFORM PROPOSAL: SIMPLE V. COMPLEX DISCRETIONARY REVIEW:**

I am supportive of standardizing the DR process, so that all applicants are treated fairly and equally according to clearly defined standards. However, I note that the following issue needs attention:

1. Difference of interpretation is a driving force behind DR filings. The same arguments over "exceptional & extraordinary" will be easy to transfer to what is "simple v. complex" without clear and fair standards.

If the Commission decides to implement the "simple v. complex" requirements, then it should adopt the recommendations offered by the AIA SF chapter for simplifying the current staff proposal.

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P. Steven Aiello, Owner

## **ATTACHMENT 2**

1. **TRIAL PERIOD / "DR-MASTER" / MANDATORY BENCHMARK REVIEW:** The goal is to create objective DR data, a single staff source for DR data management, and a firm period against which the DR data may be measured.
  - a. Select a firm trial-period for simultaneous implementation of all DR policy changes, from one to three years. This will allow the Commission to establish a clearly defined baseline to measure the effectiveness of any and all policy changes and monitor progress along the way. It will also create certainty for all process participants during the trial period.
  - b. Align the trial period to the fiscal budget cycle. This will produce the most accurate data and avoid the traps of averaging, interpolation, and/or extrapolation between calendar years and fiscal years. Perhaps the most appropriate period to start implementation of a new policy would be the fiscal year 2005-2006.
  - c. Appoint or hire a "DR-Master". Select a single staff-person, who as a regular part of their duties would be responsible for: collecting DR data in a standardized format and preparing benchmark reports. Now that the Housing Element is settled, the Planning Director, Zoning Administrator, or other Senior Planner could serve this function until the funds are available to fill open positions or expand the duties for an existing position.
  - d. Implement mandatory data collection in a simple, standardized checklist format. The staff planner assigned to a case shall input DR status data with the DR-Master at each stage of the project process. Items to include:
    - i. Total number of DR filings, divided into specific categories and sub-categories:
      - (1) Mandatory: demo, merger, special planning areas (Ballpark, IPZs, East. Neigh., et al.);
      - (2) Voluntary: Staff, Permit applicant, Neighbor applicant, Multiple filings against single project.
    - ii. Resolution of case tracked by category:
      - (1) Withdrawn or Settled prior to Commission hearing;
      - (2) Commission Action: Deny DR, Take DR with minor project modifications, Take DR with major project modifications, Take DR and deny project.
    - iii. Time required for each DR case:
      - (1) Track total amount of staff time required processing each DR case;
      - (2) Track total amount of calendar time for each DR case from filing to resolution.
    - iv. Coordinate with Board of Appeals, if possible:
      - (1) Track number of DR cases appealed to the Board of Appeals;
      - (2) Track Board of Appeals final resolution: same categories as Commission Action.
  - e. Perform review and analysis of policy changes at defined benchmarks. DR-Master shall prepare a report and deliver it to the Commission at each benchmark interval (6 months or 1 year suggested). Report shall contain a summary of the checklist data for the current interval period, summary of previous data periods for comparison, and summary analysis of data trends. With these regular reports, the Commission, the staff, project sponsors, and concerned neighbors will have a consistent, objective and reliable information source, based upon actual DR filings and resolutions, to form the basis for any policy adjustments the Commission and the public feel are required.

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2. **DEFINITION OF "EXCEPTIONAL & EXTRAORDINARY" CIRCUMSTANCES:** The goal is to eliminate confusion in the definition of "exceptional & extraordinary". Currently, the policy definition shifts with each project reviewed.
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    - i. Eliminates confusion on the part of the individual considering a DR filing. The lack of a clear definition allows an excessive range of individual interpretation as to what is "exceptional & extraordinary" and encourages Voluntary DR initiators to proceed even though they have little chance of ultimate success before the Commission;
    - ii. Provides clear direction to Staff planners in preparing and supporting their determinations. For those DR initiators who proceed according to their individual interpretation, a clear standard will assist staff in analyzing the merits of the case, and provide clear precedents for the Commission in deciding the case, in light of past cases.
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### ATTACHMENT 4

3. **DISCRETIONARY REVIEW FULL FEE RECOVERY:** The goal is to ensure that those who initiate DR pay the full value for the service of DR. With other policy changes that set clear standards for DR, more certainty will be created for the DR applicant as to the merit of their claims.
- a. Fully enforce existing Planning Code Sections 352(b) and 350(c) for Voluntary DR filings. The mechanism for full fee recovery from Voluntary DR initiators already exists in the Planning Code, but is not enforced. No changes to the Planning Code are required to implement full fee recovery. The benefits of enforcing the existing Code sections are:
- i. Conserves Department financial and staff resources for Planning's most important missions. If current trends continue for fiscal year 2003-2004, about 267 DR filings will cost the Department approximately \$433,000 according to Senior Planner Jonas Ionin's DR Policy Report dated April 1, 2004. This averages approximately \$1622 per DR case. These numbers represent only the staff planner's time spent on each case, and are exclusive of time resources spent by the Commission, Planning Director, Zoning Administrator, and Administrative Staff. The actual cost is probably closer to the \$2500 per case estimate given by Director Green in response to Commissioner Bill Lee's question at the December 10, 2002, Planning Commission meeting. If so, the actual DR cost for fiscal year 2003-2004 is closer to \$667,000.  
  
The public resources consumed by private DR filings present a significant opportunity cost for the Department's other, more important citywide missions, such as the Better Neighborhoods community planning process, Program EIRs, and the update of the General Plan. It also diverts resources from needed investment in the Department's computer infrastructure and Long Range Planning Division.
  - ii. Collection mechanisms are already established. Effective June 1, 2004, the Department will begin charging project sponsors for cases subject to Mandatory DR (demos, mergers, et al) for the full time and materials required for staff analysis. The notice of this is already on the Department's website. The same collection mechanisms for Mandatory DR should be used for Voluntary DR, with necessary modifications adapted to the Voluntary process.
  - iii. Equally applies to whoever files for DR and preserves access to the Commission. Whether it is neighborhood opposition or project sponsor opposition to a staff determination, both sides will be equally treated by the fee structure. Charging the full cost of DR does not deny access to DR. Instead, it places the proper value in proportion to the exercise of the Commission's highest power: the discretion to modify citywide policy, as enshrined in the Planning Code, on a case-by-case basis to the benefit of private interests.
  - iv. Discourages frivolous and/or "spite" DR filings. Too often neighborhood opposition or project sponsor opposition to a staff determination is the result of "hard feelings" and an inability of the parties at hand to achieve a compromise and avoid protracted conflict. "Complex" DR cases will still consume plenty of staff time and Department resources. A filing fee of \$300 will be insufficient to discourage frivolity and spite for the more "complex" cases.
  - v. Properly places high value on professional planning and project review services. Commission minutes show that Commissioners regularly praise the Department staff for their hard work and dedication in the face of difficult and contentious circumstances. Staff morale is very low and gets lower with each DR filing. The Commission can raise morale by charging full fees to the DR initiator. This will send the direct message to Department staff that their time and dedication have real value, that they are appreciated, and that their professional determinations have merit. The DR initiator must pay the public freight for their private interests.