

Development Workshop, Inc.
Room 5170
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1735 Market Street
Philadelphia, PA 19103-7599

April 17, 2012

Via Hand Delivery

Mr. Gary J. Jastrzab, Executive Director
Philadelphia City Planning Commission
1515 Arch Street, 13th Floor
Philadelphia, PA 19102

Re: Proposed Planning Commission Regulations

Dear Gary:

The purpose of this letter is to formally transmit to the City Planning Commission issues raised by the Proposed Planning Commission Regulations that are a concern to the Development Workshop.

This is a compilation of the opinions of the Workshop expressed, in part, at the meeting held by PCPC staff on Wednesday, April 4. At that meeting, attended by some fifty concerned citizens, you heard major concerns on the part of those representing a multitude of interests on a multitude of issues. However, the meeting did not address even a quarter of the issues that were on the agenda at the beginning of the meeting.

In fact none of the issues raised by the Development Workshop were considered, including the following:

As a general comment, these proposed draft regulations are not warranted as regulations that are within the four corners of the Zoning Code and are clearly expansions of the scope of the Zoning Code as enacted by City Council. The Planning Commission may not usurp City Council's powers over zoning in Philadelphia. In any event, to add accepted plans to the regulations now is a direct contradiction to the process followed to enact the Zoning Code – a process which the drafters of the regulations now wish to make a ruse.

3.4. Conflict of Interest

Section 3.4.2. Conflict of interest and disclosure process. The regulations state “any person or entity submitting physical development projects to the Commission for approval . . . must, prior to any action by said Commission, submit a disclosure statement.” There are no limitations or thresholds established so one must assume that anyone coming to the Commission

or the staff for ministerial reviews and approvals must file a Conflict of interest disclosure. The regulations reference July 13, 1973 Conflict of Interest Regulations which had specific application and submission requirements. These are absent in the proposed regulations.

5.1. Adoption of the Comprehensive Plan. The comprehensive plan and other plans, specifically 5.2 the "acceptance" of other plans prepared by others, for which there is neither provisions in the Home Rule Charter nor the new Zoning Code approved by City Council and signed by the Mayor on December 22, 2011. This section is unnecessary and should be deleted because this section adds nothing by way of regulation to extensive provisions for the preparation and adoption of the Comprehensive Plan as contained in the Zoning Code or the provisions of the City Charter which makes the plan **non-binding** on the Mayor or City Council. In the City Charter language regarding the Comprehensive Plan (Physical Development Plan of the City), the actions of the Planning Commission are recommendatory as the actions on the Comprehensive Plan are transmitted to the mayor and the council to inform them.

5.2 Acceptance of Other Plans. The Charter gives the Commission the power to prepare, adopt and modify a plan (not adopt or accept plans done by others).

The concept of the Planning Commission "accepting" privately developed plans and being guided in any manner by an accepted plan was included in several drafts of the ZCC's Zoning Code. From time to time, the provisions governing an accepted plan were revised and, presumably, discussed and considered thoroughly by the ZCC and its working group. Ultimately, the ZCC rejected the idea of providing for an accepted plan and decided to drop the concept from the Zoning Code. By including the Planning Commission in the Zoning Code, the ZCC made a decision to set forth the powers of the Planning Commission with regard to zoning matters. Here, the drafters are attempting to undo the work of the ZCC and create zoning legislation indirectly where they failed to do so directly.

The draft regulations mandate that an "accepted plan shall provide general policy guidance for the Commission" is mandatory, must be followed and is little different from an adopted plan. The regulation states that "the Commission shall not be obligated to implement the recommendations of the plan," clearly implying that the Commission has an obligation to implement the adopted Comprehensive Plan and its amendments. This makes little sense, however, since the Commission, as recently explained by the Executive Director and Commission Chairperson, is not obligated to implement the adopted comprehensive plan. The regulations, therefore, fail to establish any distinction between accepted and adopted plans.

Section 6. Recommendations on Legislation. The draft regulations contain a number of provisions that transfer power given to the Planning Commission to the Executive Director. This may well be a codification of the existing structure and, more importantly, practice. However, by attempting the codify practice, the draft may well make distinctions and determinations that were not well considered.

Section 7. Preliminary and Final Plats of Subdivisions. The Charter gives the Commission the duty to "prepare **regulations** governing the subdivision of land and **submit them to the Mayor for transmission to Council.**" Under the present subdivision Code, the

Commission approves or disapproves plans of streets and revisions of such plans, and land subdivision plans, in accordance with the Philadelphia Code and the regulations of other Departments (Streets and Water) exercising their City Charter powers. There is very little discretion for the Commission under the present Subdivision Code. The proposed Preliminary Plat and Final Plat regulations have excessive submission conditions (7.2.2.3) and (7.2.3.2) including 16., 17., 18.

Section 8. Review of Master Plans. Review of Master Plans, specifically the authority and delegation to the Executive Director (8.1), Submission requirements (8.2) exceed the authority in the new Zoning Code

8.1. Authority and Delegation to the Executive Director. The regulations delegate to the Executive Director the authority to approve, on behalf of the Commission, minor amendments to the master plans in order to fulfill the Commission's duties pursuant to § 14-304(4) of the Zoning Code. Contrary to the Regulations, the Zoning Code requires a public hearing and action by the Commission. In particular, § 14-304(4) provides, in part,

Any minor amendment submitted for approval must contain the information required by the regulations of the Commission. If, after the public meeting, the Commission determines that the proposed amendment is a Minor Amendment, the Commission may approve the amendment, or approve its with modifications.

Major Amendments must go to City Council.

Query: Does the regulations allow the Executive Director to waive the public hearing requirement. This may be good policy, but the provisions in the Zoning Code may leave an applicant with a project, the application for which did not receive public review, subject to an appeal.

8.2. Submission Requirements. The Zoning Code does not set forth the criteria for the approval of a new Master Plan. The Zoning Code implies that only City Council has to approve the Master Plan, except that submission shall contain information as required by the Commission's regulations. § 14-304(30(e)(1)(c). The exact role of the Commission is unclear. The regulations' submission requirements for new Master Plan districts exceed the scope of the criteria listed in the Zoning Code. In particular, § 8.2.4. provides that "[t]he Executive Director may request additional materials as it deems necessary to guarantee that the proposed master Plan is consistent with the state purposes of the district."

9. Review of Zoning and Building Permit Applications

Section 9. What specifically are the "prerequisite approvals and recommendations" the Commission believes it has? The powers to approve zoning permit and building permit applications should be enumerated here so as not to be confused with actual permit approval authority.

Review of Zoning and Building Permit Applications, specifically authority and delegations to the executive director (9.1) and (9.2) submission requirements that should reside with the L&I plan examiner and (9.2.2) specific submission requirements that go beyond what is called for in the new Zoning Code.

9.1.1. The Executive Director is authorized to provide, on behalf of the Commission, prerequisite approvals and recommendations on zoning permits and building permits in order to fulfill the Commission's duties pursuant to the Zoning code.

With regard to as-of-right applications (and other applications that do not call for a "final action" or qualify for "prerequisite approvals" under the Zoning Code), to what does this provision apply. Does this carry any discretion?

In past practice, the Planning Commission staff performs certain ministerial duties -- does an application meet very specific criteria to which the answer is a clear yes or no. For instance, has the PWD issued a conceptual stormwater approval -- it has done so or not. This provision seems to imply that the Planning Commission, on its own, approves or recommends over-the-counter and as-of-right permits. The Zoning Code does not provide guidance in these instances and, therefore, the Planning Commission has no discretionary role in this portion of the permitting process.

9.2 Submission requirements. Submission requirements (page 16) enumerated on the next seven pages are not within the commissions powers to determine or require. Given the impact of these "minimum" requirements to significantly increase the cost of a permit application, they should be the subject of legislation, adopted after public hearings and assessment of the cost of preparing an application.

Site plans for the development activities provided in Subsection 9.1.1. of these Regulations, above, shall satisfy the requirements of Subsection 9.2.

This section seems to intrude on the role and functions of L&I's Zoning Unit by setting forth the requirements for plans that are to be evaluated by the Zoning Examiner. If the Planning Commission does not have discretionary approval rights, then the requirements should reflect what the Zoning Examiner needs to review the plans and should be left to the requirements of the Zoning Administrative Manual. Notwithstanding the above and except as state below, the requirements seem reasonable.

9.2.2 The Executive Director may require any of the following additional information to be provided on site plans, where applicable:

9.2.2.11 Written description or samples of building materials.

Clearly, the requirement for written description or samples as the zoning permit stage of an as-of-right application is overreaching and suggests a criteria not found in the Zoning Code. This serves as precedent for the incorporation of more requirements not Code driven into

the regulations. This is particularly troublesome as the addition of a regulation alone would likely not trigger the public scrutiny that either an ordinance or omnibus rule-making does.

Section 10. Civic Design Review including procedure, submission requirements and review guidelines

10.4 Procedure

10.4.1. The Executive Director shall review the application and determine its completeness pursuant to the submission requirements delineated in subsection 10.5, below.

This gives exclusive prerogative to the Executive Director to determine whether a submission meets the requirements, which are extraordinarily broad. Query: does the Executive Director has discretion to waive any submission and what are the criteria for establishing whether the submission is complete. Query: if an applicant refuses to made a submission, what is the result of the failure? A negative recommendation or a complete shutdown of the process. For instance, what if the Executive Director believes the “written summary of intended sustainable buildings” just isn’t good enough. Shouldn’t the applicant be given an opportunity to address that with the Committee?

10.5 Submission Requirements. (page 23 through 27) are over-reaching considering that they go beyond the requirements of the Zoning Code and involve, at the end of the process a recommendation to the applicant. Their impact upon the cost of preparing a submission needs to be evaluated

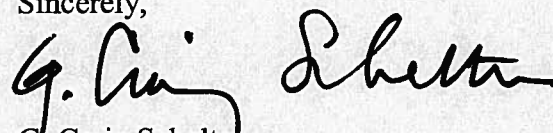
These are very detailed and extraordinarily broad. Use of words like “all elements,” “all sides,” “where relationship of outside spaces to inside spaces can be understood” are just not terms capable of enough precision to be appropriate for zoning regulations. If the regulations suggest and necessarily implicate criteria that are not set forth in the Zoning Code, then the regulations exceed the permissible scope of regulations.

10.6 Review Guidelines.

The Review Guidelines are, again, extensive, broad and detailed. Filled with a lot of “shoulds,” they provide little real guidance that could allow an applicant to prepare plans. In any event, they exceed the scope of the provisions of the Zoning Code. If the Zoning Commission had wanted to set forth these guidelines, then the Zoning Commission should have done so.

We would be pleased to meet for a continued and necessary dialogue on the above concerns.

Sincerely,


G. Craig Schelter
Executive Director

cc: Alan J. Greenberger, Chairman
Eva Gladstein, Deputy Executive Director
Members of the Planning Commission