

**A2D2 Design Guidelines Joint Working Session:
City Council, Planning Commission, and Downtown Development Authority**

7:00 – 8:45 pm
September 14th 2009
CTN Studio
2805 S. Industrial HWY Suite 200

Staff Present: Alex DiLeo, Jayne Miller, Wendy Rampson, Abe Barge (Winter and Co.), Amber Miller (DDA)

CC, CPC, DDA Present: Eric Mahler, Erica Briggs, Diane G, Kirk Westphal, Bonnie Bona, Tony Derezinski, Stephen Rapundalo, Mike Anglin, Hohnke, Marcia Higgins, Carsten Hohnke, Margie Teall, John Heiftje, Sandi Smith, Sabra Briere, Christopher Taylor, Joan Lowenstein, Leah Gunn, Roger Hewitt

Members of the Audience:

Chris Crockett
Ethel Potts
Ryan Stanton
Alice Ralph
Dave Askins
Susan Pollay
Judy Foy
Ray Detter
John L. Elter

Meeting Summary:

The purpose of the meeting was to give members of City Council, City Planning Commission, and the DDA Board an opportunity to discuss the August 28, 2009 A2D2 Design Guidelines draft and ask questions of staff and the Winter and Co. consultant, Abe Barge. The majority of questions focused on the options for design guideline implementation and process, ranging from entirely voluntary to mandatory. Most appeared to be interested in pursuing mandatory guidelines, but acknowledged that work still needed to be done to reach this level of compliance. Comments directed specifically at the content of the design guidelines focused on a need to clarify the relationship with historic district guidelines and these downtown design guidelines, as well as the need to consider adding diagonal requirements into the guidelines.

Presentation 7:00-7:30

Abe Barge gave a brief presentation, providing an overview of the Design Guidelines Document, and setting up the context for application of the design guidelines. He discussed elements of Chapter 1: how design guidelines relate to zoning and historic district regulations and how they add an additional layer of detail to such regulations. In addition, he discussed Chapters 2 and 3, primarily focusing on the guideline format and helping the public to understand the logic of the layout and high priority guidelines.

Q & A with Council, Planning Commission, and DDA 7:30-8:30

Question: How has the document changed, what has been removed?

Answer: Guidelines that were the lowest priority were removed and others were consolidated. A strike through copy illustrating exactly what has changed will be provided.

Question: What would mandatory guidelines look like? We assume that conceptual guidelines would not be legally enforceable.

Answer: The current form is generally ready for mandatory implementation. Any further revisions would depend on the community's and the approving body's comfort.

Comment: *That's a good point, [as the approving body] that is a decision we need to make.*

Question: You mentioned there are four levels of compliance – can you review those?

Answer: The first level is voluntary, where the guidelines are available for review and implementation if one chooses; the second involves a statement of how the guidelines are, or are not being, followed; the third is often referred as advisory, where an advisory body reviewed a proposal based on the guidelines and offers an opinion; and the fourth is often called mandatory, where compliance with the guidelines is required. A hybrid version is also possible, for example, the advisory approach could be used for smaller projects and a mandatory approach could be used for larger projects or those using premiums.

Question: We've heard many comments on the fast timeline, how would you respond based on your experience?

Answer: As you approach the conclusion the process always feel rushed. I believe it is important to move forward on the set schedule but do take more time if you think that significant feedback will be provided. In our case it seems that most ideas are already floating and more time might not generate many more.

Comment: *I am concerned about the voluntary approach, about the outcomes we can expect, and how input and assessments could be done.*

Answer: Those concerns are legitimate; the voluntary approach has the least predictable outcomes. There are not many communities with voluntary design guidelines, although there is a community in Texas with voluntary design guidelines that does see good outcomes. The effectiveness of voluntary design guidelines depends on the individual community's desire and readiness.

Implementation of the guidelines can be assisted by using a checklist and having that be submitted by applicants, and incorporating a review as part of staff report comments. Planning staff already has pre-consultation with developers to advise them on city expectations, and help them design, and the guidelines will be included in those discussions.

Comment: *I am concerned that even with a checklist, if a developer chooses not to use the guidelines, a 'matter of right' project could not be rejected.*

Question: Have you experienced any unintended, or even pleasant, consequences with process choices? Can you address timeline and costs?

Answer: As you move up the range of options, from voluntary to mandatory, you are asking for more effort by applicants which costs money and time. Permit review and approval time might also increase, but we work to dovetail all elements of review and approval to prevent or minimize that. We definitely recommend annual review so that kinks in implementation and timeline can get worked out. Boulder, Colorado has an advisory approach, not mandatory, but gets good result in the end. Developers in Boulder have recognized that it is easier for them if they acknowledge the guidelines – they can move through the system more easily.

Question: Are there places that have mandatory guidelines that don't work?

Answer: It is important that board reviewers receive regular training, mandatory approaches are less successful where reviewers use too much of their own discretion or own opinion. When reviewers don't follow guidelines and deviate from expectations the overall success drops significantly.

Question: How easy is it to switch approaches? I have concerns about how you legislate design, it is something that is in the eye of the beholder.

Answer: As a first step you can adopt the design guidelines as guiding principles and ensure they are the basis for any decisions. Any set of design guidelines requires discretion and allows for flexibility, which is a good thing. Design is context sensitive and meeting guidelines is about intent (as clearly stated in the document) and it is up to developers to bring ideas forward that meet intent. Reviewer discretion is used to determine if intent is met and it can be met in many ways.

Question: What is the typical makeup of design review boards? In Boulder?

Answer: Professionals are often used but not exclusively. In Boulder some seats are specifically for non professionals. A good mix might be four design professional and 2 citizen advocates.

Comment: *My understanding that this review process would start at time developer meets with staff.*

Question: With a voluntary approach and a project shows no compliance at all –what options do we have to say we’re not happy with this development and go back to the drawing board?

Answer: It would be essentially the same as currently. Comments could be offered but approval would be based on the current standards in ordinance.

Comment: *My thinking is that we haven’t come up with every element - if we see something missing or it’s not working, then could add it at annual review.*

Question: Experience with mandatory system – compliance with intent to the guidelines – is this practical? What about staff versus professional design review board?

Answer: Advantage with staff is ease, nothing needs to be put into place. Advantage with design review board is can tap into community expertise. There are also hybrid systems where staff reviews small projects or where staff reviews all projects, but applicants can request movement to design review board.

Question: Sanctions: Developer agrees to design elements and then when building is built design elements disappear – is there any way to stop this?

Answer: Currently there are stipulations included in development agreements. If code was amended, the code already provides for penalties for noncompliance and those would continue to apply.

Question: There is a benefit to having predictability of outcome among both neighbor and developer – which scenario gives the best predictability?

Answer: Mandatory – gives the best predictability, with voluntary some take guidelines into account and some ignore.

Question: Intent is not prescriptive – given the variety in downtown sites and the range of guidelines, it is not possible for a development to meet all guidelines. How do you ensure some can be met and others not?

Answer: We might need to include more guidance in next draft, providing resources to address conflicts. The prioritization that was added will also help address conflicts. The project should meet *intent* of all design guidelines. It is a judgment call of reviewers – yes you met some and not others – some subjective.

Question: Timeline is a legitimate concern at this point. There is not much time for community to look at content. Some would like to see this tested – is this something other communities have done?

Answer: Other communities do do testing, Bruce Race (one of original consultants on this project) did a lot of testing. There is material that staff can be directed to and it is definitely something to talk about doing more. Could do retro review - this occurs by looking at plans submitted recently and trying to subject those plans to proposed zoning and design guidelines. This might bring up issues. Or staff/consultants can design a project themselves and try to make the worst possible project under the proposed rules and see what they come up with.

Comment: *With regards to the question about legislating design – seems like this is what the past 5 years have been about, coming up with design guidelines to make rules about what we want our community to look like.*

Question: There is anxiety because design guidelines are new to us, but of course they have been used in many cities in a compulsory way. Any experience with cities where they disband their design guidelines?

Answer: Not personally, but I think that this scenario would have to exist.

Question: Skeptical of the idea that this is rushing because this process has been going on for years. Assumption in Calthorpe is that there will be Design Guidelines. Calthorpe memo encourages mandatory process. Also, when A2D2 got to council, diagonals were removed and framed “well this puts greater onus on Design Review”. Think this feels like

rushing because they are voluntary. If community feels this should be mandatory – is that process an easy addition or will it take considerably more time?

Answer: It is a relatively easy change to the design guidelines document. To implement it in city code would probably take several months to ensure that it is set up properly. Either way (voluntary or mandatory) there is the option to move forward and not wait for mandatory status – can become mandatory subsequently.

Comment: *There are also costs to poor design, nobody comes to a downtown to see poor design. Recognize there is an anxiety cost to opening up for interpretation, but there is a cost to poor design and as a result a real economic cost to having this voluntary.*

Question: I think I would like to see design guidelines tested in the models that can show the biggest, ugliest options. What would these rules look like applied? Want to see one possible bad building in each Character area by zone.

Answer: Work with staff to see what we can come up with. You haven't seen zoning modeling? That is the first thing to look at and how it might shape things.

Comment: *As a member of the advisory committee – some zoning modeling is available. We looked at modeling based on zoning, but not with the design guidelines - that is the key piece.*

Question: Are the design guidelines intended only outside the historic districts? It is not always clear, clarify when in the historic district.

Answer: Historic District guidelines are mandatory, so the way to approach this is to look at the historic district design guidelines. If clarification is needed in the document – that is really something that needs to be addressed. Intent is to have some of the downtown design guidelines also encouraged in the historic district design guidelines. This confusion needs to be fixed in the document.

Question: Diagonals – any reason for incorporating into the design guidelines now that they are not in zoning?

Answer: This is a concept that we should explore – have received this feedback from several sources.

Answer: More necessary when there were no height limitations.

Question: Use is really a zoning issue. Retail first floor, transparency on primary street – very little definition of what this means. Some stores have dark windows or displays so you can't see inside, the document should be more specific where we want that active visual interest. Was this flexibility intentional?

Answer: There is the opportunity to be more specific and to talk about things that don't meet intent – while providing more flexibility. One way to make the street more active is not to have dark windows, etc.

Public Comment and Question Period 8:30-8:45

Question: Can you tell us where design guidelines really have positive impacts on downtowns?

Answer: Peer communities: Athens, GA; Boulder, CO. Communities that are not our peers: Carmel, CA; Helotes, TX. There is comparable design review around the country – something that I can help staff with - post web links and info. To understand if it had a positive result, you might need to actually talk to staff from those communities, you may get different opinions depending on who you talk to.

Question: Now require community feedback early in the process. There is a concern that once building is far along – won't get improvements. What is the impact of having design review early rather than at site review?

Answer: Of course it is better to have review earlier. When expectations and design review are shared earlier in the site review stage it is possible for architect and developer to implement changes.

Comment: *Tremendous progress has been made on the document and it can be so much better still if there is more time. At one point training was discussed and discussion that developers could have a design guidelines checklist so that education takes place with regard to entire community agreeing on what we don't want – negative impact on neighbors. Controversial sites – take design guidelines and concentrate on what positive things can be done on those sites with design guidelines. Let's get it straight before approval.*

Comment: *It may also be better to have something in place while we continue to work on improving design guidelines.*

Comment: *Do you recall when there has been a discussion of design guidelines? I don't recall having these discussions at Planning Commission or City Council. This is the first discussion of the design guidelines and the reason why it is making some uncomfortable and you hear people asking for more time. I'm already aware of architects and design professionals who are already volunteering to be on a board. No doubt we can get volunteers.*

Question: There is no review process right now – the only thing that is mandatory is a statement of compliance?

Answer: Yes, that is the current intent.

Question: Athens has mandatory guidelines – but premiums to encourage compliance?

Answer: Outside of the historic district, design guidelines are not mandatory. However, zoning is set up to allow for flexibility to exceed by-right zoning. If developer wants to exceed by-right zoning, then moved in mandatory design guidelines.

Question: Did the Calthorpe report make recommendations to ignore some of the design guidelines recommendations and follow others?

Answer: City council made recommendations about which Calthorpe recommendations to pursue and the steering committee directed the process within those recommendations.

Question: Do you think design guidelines are ready for mandatory compliance in current form?

Answer: Yes, in a couple of weeks the draft that takes into account feedback received will be ready for any implementation strategy.

Question: If ready – how would we give legal effect to things such as visual continuity and visual interest? Document is laced with weasel words putting City at risk for liability.

Answer: From experience, in terms of legality, design guideline review systems are upheld as long as they are designed for beneficial public purpose and decision making is uniform. Or where zoning permits a development, but design review is in disconnect with what is allowed by-right. Consistency is most important. Yes – implementing the next draft as part of a mandatory system is legally defensible.