

# Report from Blue Ribbon Development Review Committee

September 15, 2004

## BACKGROUND

This committee was appointed by City Manager Tom Brymer in April, 2004 as an extension of the City's executive branch.

### Composition

A total of seven committee members were appointed as follows:

- Bobby Bisor
- Jerry Fox
- Celia Goode-Haddock
- John Hamilton
- Gene Joyce
- Lynn Stuart
- Ben White

Mr. Brymer appointed Jerry Fox as Chair and Bobby Bisor as Vice-Chair.

### Scope and Charge

The committee was asked " to review the City of College Station's Development Services Department and make advisory recommendations to the City Manager on ways to improve the development review services offered by that department."

### Mission

The committee was given a mission "to make recommendations regarding the City of College Station's development review processes and related issues that will result in processes that improve the community's quality of life for all citizens commensurate with that of a world class community."

### Goals

To examine:

- The City's development review process
- Development Services' organizational structure
- Development Services' response efficiency
- Development Services' response effectiveness
- Development Services' user friendliness
- Development Services business relationships

### Desired Outcome

A development services department and a development review process regarded statewide as a "best practice" by other local governments, the development community, and College Station citizens.

### Methodology & Protocol

- The committee was provided with extensive historical information, including copies of previous studies, etc.
- The committee met with Tom Brymer and key representatives from his office for the first three meetings to ensure that we were briefed on organizational structure, personnel, and current practices being followed.

- Subsequent to the initial three meetings, no one from the City Manager's office was present in meetings unless the committee made such a request.
- Composed and distributed Communiqué #1, attached, in an effort to apprise stakeholders of committee's purpose and plans.
- Composed a set of interview questions and disseminated same via Communiqué #2, attached hereto.
- Confidentiality of comments was communicated to all interviewees.
- During the course of four months, the committee interviewed a total of 32 individuals, comprised of representatives of the development community (developers, engineers, etc.), current city employees and elected officials, former city employees, and representatives of development services departments of other cities.

## **FINDINGS & RECOMMENDATIONS**

Before addressing our findings and recommendations, four points are in order.

First, most of our findings are not unique to the last few years, but go back 15 to 20 years, if not longer. Because they span the terms of multiple mayors, city council members, city managers, city attorneys and development services directors, they are difficult to attribute to any one or two individuals, but rather are the result of a culture and set of practices that have developed over a long period of time.

Second, none of us feels comfortable making specific "micro" recommendations regarding the development services process, even though we understand that to be part of our charge. We all have limited first-hand experiences in working with the Development Services department, and do not profess to be qualified to address some of the more technical areas of the process. Instead, we contend that if the right department director is in place, that person will readily know what specific adjustments need to be made to the process and implement them. Thus, our recommendations are at more of a "macro" level, and some concern less tangible issues, such as departmental culture and interdepartmental communication. The new Director of Development Services might wish to seek more specific recommendations from outside consultants on such issues as staffing levels and model processes, or seek input from members of the development community who are better versed in process issues and ordinance shortcomings specific to College Station.

Third, it should be noted that this committee was appointed essentially at the same time as the Development Services Department director position became vacant, thus making the inquiry more challenging. A less emotionally charged environment that included the institutional memory of an incumbent director would have been more ideal, enabling us to spend more time delving into some of the aforementioned process issues..

Fourth, because many of our findings and recommendations go beyond the Development Services department and involve that department's inter-workings with other parts of city government, we have chosen to organize our findings and recommendations into four distinct units of responsibility:

- I. Development Services Department
- II. City Manager's Office
- III. City Attorney's Office
- IV. City Council

## **I. DEVELOPMENT SERVICES DEPARTMENT:**

### **Findings:**

1. There appears to exist in city government, as it relates to development services, a pervasive attitude that “the regulated” should not have a major role in shaping “regulations”
2. There appears to exist in city government, as it relates to development services, a pervasive anti-business attitude that most developers are against good development – or at least cannot be trusted to provide a quality product.
3. The development community generally regards Development Services as inconsistent and unreliable in its decisions, and lacking in a service mentality.
4. There appears to exist a longstanding culture of isolationism and victimization within the department.
5. There exists a strong hesitancy, reluctance and resistance to recommend and/or implement changes to both process and policy, even when there appears to be widespread consensus from all stakeholders that the changes are needed.
6. Development Services staff does not appear to have in-depth knowledge of the development related ordinances that they administer. Moreover, there does not appear to be an active program of continuing education.
7. There is a consistent tendency to rely on perceived “case law” or “prevailing thought doctrine” instead of publishing updated and amended codes accessible to all. This leads to a broad use of exceptions, lacking objectivity and reinforcing the perception of inconsistency and favoritism.
8. There exists a consensus among stakeholders that subdivision ordinances are outdated and, in many cases, unreasonable, and therefore need to be rewritten.
9. Employees appear reluctant to make recommendations, let alone decisions.
10. Some employees, especially those with professional designations, believe that management does not value their professional opinions and recommendations. They perceive that their recommendations are watered down, if not totally disregarded or suppressed.
11. Development Services employees appear fearful of management retaliation for taking a position, especially if a position ultimately proves to be either faulty or politically unpopular. This is especially applicable to senior staff. [We found no evidence of such retaliation and actually found evidence of a high degree of tolerance with respect to employee lapses in attention to detail and judgment. In fact, there exists a frustration on the part of management because employees do not take more or stronger positions. We also found no evidence that this perception of management existed in widespread form in other departments, although we did not conduct extensive interviews throughout city government. Nonetheless, the perception still exists among Development Services staff and appears to be deep-rooted within the department.]
12. Some employees have a strong distrust of and disdain for the City Attorney's office and will go out of their way to avoid interaction with that department.
13. Staff does not appear to proactively try to remedy inadequacies in codes or plug gaps in regulatory oversight. For example, we found that while there is regulatory oversight of everything within a 5 foot perimeter of a building, there is no oversight of

the space between that 5 foot perimeter and the city easement. This "no man's land" has caused many problems for the City Utilities department.

14. Communication between Development Services and most all other city departments is in dire need of improvement, in both directions.
15. In a well-intentioned effort to meet timeline requirements, staff in many cases appear preoccupied with speed versus quality review. Among other implications, this leads to the overuse of the "stop review" mechanism.
16. There is a problem with distribution of departmental workload between and within divisions. [Long-range planning, neighborhood services, and development review.]
17. There appears to be limited breadth and depth with respect to employees' educational levels and prior work experience in other municipalities or even in the private sector.
18. Licensed engineers within Development Services appear to be very concerned about the personal licensure impact of overrides to their professional recommendations. While this may be a legitimate concern in some cases, we also found that there appears to be a strong culture in Development Services that perceives any questioning of their recommendations or suggestions referencing their department to be problematical.
19. Although we did not examine department turnover in depth, what information we discovered led us to conclude that the turnover is not out of line with overall city turnover levels. Many of those who purportedly left because of unsatisfactory work conditions would have perhaps left anyway because of higher compensation levels in the private sector.

**Recommendations:**

1. The primary solution to the "inconsistent and unreliable" finding, in our opinion, is to revise subdivision ordinances, and do so quickly even if doing so requires the engagement of a consultant.
  - Actively involve development community (civil engineers, developers and others who are well versed as to where the problem points exist). The "regulated" have to be regulated, but it's unwise to view cynically their input as self-serving and unworthy of serious consideration. Stakeholders should be brought in at the earliest possible stages of ordinance formation.
  - Actively involve other city departments that are affected by Development Services issues (e.g, Utilities Department and City Attorney's office)
2. Decompress time frame for development review
  - The Director of Development Services should prioritize the review of timeline issues, involving civil engineers and other members of the development community who are the very ones frustrated by current bottlenecks. This review would include filing deadlines, time frame between delivery of staff comments and deadline for refiling, etc.
  - Since, the law allows for 30 days, Development Services needs to "under-promise and over-deliver" by establishing realistic deadlines.
  - Need to better define what constitutes "complete application". Look at the whole process and eliminate all forms and reports that are not actually used or needed for the permitting process.
  - Need to allow ample time for Legal review
  - Need to develop a simplified process for items that do not require high levels of review
3. We suggest a review of the requirement for preliminary plats.
4. Bring all engineering and Development Services personnel together in one office.
5. Increase interaction with other departments, to counter the culture of isolation.

6. Department personnel must be willing to embrace change.
7. Create more professional appearance in department.
8. Involve staff engineers in essential meetings.
9. Obtain as-built plans within 30 days of issuance of certificate of completion, even if financial guarantees or penalties are required.
10. Correct "no man's land" problem between easement and 5' perimeter of building
11. Improve management and oversight of issuance of "slab only" permits.
12. Establish consistency and predictability. Exceptions should be carefully considered when applied. Developers should not feel compelled to employ an attorney to get a permit approved or address flaws in the system.
13. Assign job numbers and maintain job time sheets to better determine how time is being used, and where efficiencies might be realized. (See Findings # 15 & 16)
14. Need to establish continuing education program to address Finding # 6 on page 3.
15. Need to increase diversity within the department with regard to employee educational backgrounds and work experiences in other cities or private sector. Need to review overall hiring process.
16. Employees need to develop a better understanding of the economic impact of their decision process on the city, community and private sector.
17. The development review process should be consistent, reliable, and user-friendly . Developers should not feel compelled to circumvent the system by characterizing their project as a "major economic booster" to get it through the system.
18. Evaluate departmental staffing and workload distribution to address Finding # 16 on page 4.

## **II. CITY MANAGER'S OFFICE:**

### **Findings:**

1. There exists a widespread perception that the city manager's office "micromanages" the affairs of development services.
2. There also exists a widespread perception that city management has increasingly become "chronically concerned" with avoiding controversy and public criticism. The result, among other things, is a city government that is not willing to take some risks.
3. We believe that the real problem is primarily related to poor communications. For example:
  - A decision to override recommendations by Development Services staff may be made for very sound reasons, but perhaps those reasons are not adequately explained to staff, leaving them with the perceptions that their opinions simply don't matter.
  - Directions by city manager's office to get a problem solved or find a way to work with a developer may be done in such a way that staff misinterprets it as a request to acquiesce to a developer's demands regardless of what negative implications may arise. In fact, the real intent of the message was simply "go the extra mile and prioritize the matter, but do not do anything contrary to the best interest of the public/city."
  - Communication style may come across as domineering or negative.
4. Many believe that the city manager has a tendency to overprotect the City Council by shielding them from tough decisions.

### **Recommendations:**

1. Need to foster better communication with Development Services staff.
  - Attempt to keep intervention in Development Services matters to a minimum. When recommendations by Development Services staff are overridden due to other compelling factors, communicate the rationale to the Director of Development Services who should then share the rationale with staff.
  - Be cognizant of how staff interprets or "hears" the message due to tone of voice, body language, or the harried context in which communication may take place.
  - Be more aware of how Development Services employees may interpret directives from City Manager's office.
2. Dedicate whatever resources are necessary, financial and human, to get subdivision ordinances rewritten within no more than six months of this report.
3. We recognize the challenge of balancing the multiple and often competing interests of all the city's stakeholders (i.e. multiple and changing council members, special interest groups, etc.). The City Manager should be guided by clearly defined policies and priorities and should work to build consensus among stakeholders. Recognize the reality that success without some level of controversy or risk is not possible.

### **III. CITY ATTORNEY'S OFFICE:**

#### **Findings:**

1. The city attorney's office (hereafter referred to simply as "Legal") has a low tolerance level for incompetence or incompleteness as related to the work product of, or interactions with, other city departments. Moreover, Legal appears to have little, if any, respect for Development Services department, reciprocating the disdain which Development Services staff has for Legal. This mutual disdain has led to a very dysfunctional relationship between Development Services and Legal that contributes to Development Services' tendency to avoid consulting Legal about problems or seeking answers to questions.
2. Legal often takes an activist role in business or policy decisions on non-legal related matters. Legal goes beyond giving legal advice, assessing risk and representing the city in legal proceedings. This foray into "risk management" (especially to the extent of making business decisions) is encouraged by City Council's tendency to ask Legal's opinions on matters not under Legal's purview.
3. Legal is widely perceived as being overly cautious.
4. Legal is regarded by many (both internal and external) as being more negative than positive, and is perceived by some in the development community as being "deal killers."
5. Legal gets blamed for a lot of issues in which they were never involved, becoming a convenient scapegoat for Development Services staff to point at when dealing with the development community.
6. Other departments within city government appear to have an overall good working relationship with Legal.
7. There is a widespread perception, both internally and externally, that Legal does not respond in a timely manner. While many instances may exist where Legal does indeed "sit on things", as a general rule we found that Legal lacks adequate time to properly review many matters. This results from the compressed timeframe in which Development Services operates. To some degree, though, it is also due to the incomplete and inadequately researched state in which many recommendations or requests reach Legal.

8. There is also a perception, perhaps not as widespread, that Legal imposes on developers requirements that are not in the city code. However, we found that it is generally Development Services that is attempting to impose these non-codified requirements on developers, and it is Legal that is left to try to defend the City's actions. Legal appears committed to streamlining the process, and to holding developers only to those requirements which are actually written into the city ordinances.

**Recommendations:**

1. Need to work on developing a team relationship with Development Services, and fostering mutual respect between the two departments.
2. Need to develop a "fast track" process for items that do not require high levels of review (e.g., easements)
3. Need to work on customer friendliness
4. Need to be responsive to reasonable timelines / deadlines
5. Avoid offering opinions on non-legal matters. Consider prefacing response with something like "This is not a legal matter; ultimately it is a business decision. If you nevertheless want me to offer my opinion, just understand that it's not a legal issue."
6. Encourage and support an expedited process to rewrite outdated subdivision ordinances.
7. While we recognize the hesitancy to rely heavily on written communication with respect to legal matters, this makes it all the more important to improve and enhance verbal and face-to-face communications. Such improvement should help tear down the current barriers created by a bunker mentality.

**IV. CITY COUNCIL:**

**Findings:**

1. There has been an historical tendency for council members to become overly involved in staff work. Therefore, there has been a swing in the opposite direction toward a policy of limiting council's interaction with staff. We recognize and appreciate that council members are elected to serve the interests of their constituents. The issue is how they achieve that goal within a council/city manager form of government.
2. Council's philosophy and priorities for development are not clearly defined.
3. There exists a perception that in its efforts to be responsive to citizens, Council tends to micromanage or send mixed signals by its actions or inactions.
4. There is a perception that Council increasingly seeks the advice of the city attorney on non-legal issues. Issues and policies are viewed first through legal lenses rather than "good government" lenses.
5. We recognize the goal of the city charter in having the city manager and city attorney on essentially the same level, organizationally, reporting directly to Council. However, it must be recognized that it creates natural tensions and organizational dysfunction and, therefore, must be carefully managed by the Council.

**Recommendations:**

1. Council should establish and clearly articulate its vision, philosophy and priorities for development in the community, including design standards, neighborhood protection, etc. In all its actions, Council must make clear that it encourages "smart growth."
2. Council, not staff, should establish this vision, albeit with considerable input from staff and other stakeholders. Furthermore, Council should codify its vision in clearly

articulated ordinances, which are sufficiently specific and objective so as to limit staff's ability to impute their own vision through the imposition of additional requirements. Council should also set the terms and conditions for determining if a project gets "favored status" treatment, as was done with the recent adoption of the FastTrack program in conjunction with the Research Valley Partnership, City of Bryan, and Brazos County.

3. Direct staff to recommend ordinance amendments as necessary to prevent a particular matter from repeatedly arising as an exception, and establish a timeline for that revision to come back before Council.
4. Recognize and respect the distinct and separate roles of the city manager and the city attorney. Do not ask Legal for business advice and do not ask City Manager for legal advice.
5. Arrive at conclusions after listening to all input, and then, once action is taken, speak and act with a unified voice.

**Request for Individual Meetings**

Recognizing the limitations of written communication, our committee recommends and, indeed, encourages the opportunity to personally visit with representatives from each of the four units of responsibility:

- Development Services Department
- City Manager's Office
- City Attorney's Office
- City Council

We believe that the maximum benefit of this report can only be realized if discussed in a setting where questions can be asked, examples can be provided, and points can be elaborated.

**Acknowledgements:**

We would like to thank the 32 individuals who took time to visit with our committee, in many cases with significant preparation, and in all cases with a sense of sincere dedication to improving the process.

**Respectively Submitted:**

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Jerry E. Fox, Committee Chair

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Robert T. Bisor, Committee Vice-Chair

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