



STAFF REPORT

Staff recommendations to City Council

Honorable Mayor and Council Members

Summary

Staff recommends that we be directed to alter our approach and manner in developing staff reports to the City Council, along the lines described in this report.

Background and Discussion

Council Member Warden proposed an Item 9 at the November 25 Council Meeting, questioning whether staff recommendations should be dropped from staff reports; Council agreed to discuss this matter at the first January meeting.

In the Council discussion, it seemed that the major concern was in matters involving applicants and other “third parties.” Further, the concern seemed focused on land use decisions. One hypothetical example illustrating the concerns is as follows:

- Staff recommends approval of a land-use application.
- Planning Commission conducts a hearing, and subsequently develops findings to deny the application.
- The applicant appeals to City Council, and suggests that the recommendation of professional staff should be given more weight than the findings (and decision) of the Commission.

In this example, Council may feel torn between the two recommendations, one from staff and the other from the Commission. One possible solution, then, as suggested by Council Member Warden, is to eliminate the staff recommendation in the first place. That way, only the Commission decision/recommendation remains, to be weighed against the applicant’s arguments.

Council, on November 25, also briefly discussed other possible approaches, e.g., the use of “minority reports” when there are arguments on both sides, indications from staff that a given recommendation is a “close call”, and more development of options. The thrust of these remarks was to provide more discussion in staff reports of alternative courses of action than

the one recommended by staff. The Council's discussion focused on land-use decisions, so it is only the recommendations related to those decisions that will be discussed in this report. The absence of recommendations for other decisions (e.g., the development of a proposed budget) would raise other issues, which are not described here.

Discussion

Staff would have great difficulty in implementing the elimination of recommendations from staff reports. The analysis of existing policies and directives, past City decisions, and one's own professional experience will lead a staff member to a preferred course of action. If staff does not write up that course of action as a recommendation, it could be viewed as an abandonment of professional responsibility. Perhaps more to the point, the judgment of the staff would be hidden from the reader, which could cause even more problems.

It is important to remember that many land-use judgments are unavoidably subjective; is a proposed structure too bulky, or not well-integrated into its neighborhood, or does it work well within the topography of the site? These kinds of issues call for judgments about which reasonable people may disagree, and it should be no surprise, then, that occasionally Council, Commission, and staff may come to different conclusions. Staff believes that an airing of any differing perspectives contributes to a good final decision. Accordingly, it is important that staff recommendations continue to be part of staff reports. Nonetheless, staff believes that certain adjustments to the structure and approach to staff reports could help the Council, Commission, and the public in fully understanding the analysis of the issue. In particular, staff has four suggested changes.

Suggestion #1—Add a Disclaimer. When staff analyzes a land-use case, we look at the particulars of the application before us, and examine it against established City policies and practices. Those policies, combined with knowledge of past decisions and staff's professional judgment, drive the analysis and subsequent staff recommendation. What is unavoidably missing from the analysis, however, is any testimony or new information developed at the public meeting, that is, the Planning Commission hearing. Under this recommendation, staff would develop standard language indicating this shortcoming to be included in all staff reports, so that the applicant and all others could understand that the Commission has the benefit of the public input, and the staff analysis necessarily does not.

Suggestion #2—Label Close Calls. In many land-use applications, established values and policies conflict, and the decision will rest on a balancing of those competing values. In some cases, it may seem to be an easy call, that is, it is at least believed (acknowledging the subjectivity of many of these kinds of judgments) to be clear that one value trumps all the others, and that a certain course of action should be followed. In other cases, it may not be so clear which value or policy should be controlling. In these cases, it would be helpful for staff to label their recommendation as a close call, in that another balance of values would tip the decision another way. The possible downside of this approach is that it might contribute to the complexity of the public debate, but if the values are in conflict, perhaps lengthy debate is desirable.

Suggestion #3—Include More Analysis of Close Calls. In cases that are, as described above, a close call, it would be appropriate to describe what different factors the staff used in coming to their recommendation. For example, each policy embodies one or more community values, and it can happen that policies conflict, as applied to a particular case. Then, the decision may rest on a balancing of competing policies, which balancing is a close call. In this kind of case, it would be useful for staff to explain the conflict in policy direction, and to describe not only the recommendation, but other decisions that would result from a different balance of policies. It should be noted that, due to the subjectivity inherent in much of these analyses, one person's obvious conclusion may be another person's close call, so there will be disagreement on this score, as well. This will be a continuing process of review between staff, the Commission, and the Council, leading to the final suggestion.

Suggestion #4—Monitor Staff Reports. The purpose of staff reports is to provide a framework for the public discussion leading to the eventual decision. If the reports are not meeting the needs of the decision-makers, staff needs to know about the concerns, understand them, and be given the opportunity to change their approach. Staff recommends that we implement the changes described in this report, and that Council (and Planning Commission) continue to monitor the reports. If further changes are called for, they can be discussed and put in place as well.

Alternatives

The suggestions described above will, staff believes, go a long ways toward addressing the concerns expressed by Council Member Warden, as we have understood them. Some of the other ideas are less workable or desirable.

No recommendation—Earlier in this report, staff discussed many of the reasons why the elimination of staff recommendations is problematic. In addition, such a requirement would present special problems for me, in that my professional ethics require that I provide a recommendation; we would have to discuss this alternative further to determine how that ethical requirement could be met.

Minority report—The idea of a minority report can be covered, staff believes, by increasing the explanation and analysis on those cases where there is a close call. A full analysis of every available option would, however, add significantly to the length and complexity of staff reports, and thus to the cost of development review. Further, in cases where it is not a close call, such additional analysis would be superfluous and potentially confusing.

Subjects other than land use—As noted above, consideration of the elimination of staff recommendations for subjects other than land use (e.g., budget) would generate other issues and discussion. This report has focused on land use, but if the Council wishes to expand the discussion, this should be scheduled for a future Council agenda.

Fiscal Impact

There is no fiscal impact to the suggestions contained in this report.

Conclusion

Staff believes that implementation of the recommendations described in this report will effectively address the concerns raised by Council Member Warden in the November 25 discussion. If these changes are not effective, or do not go far enough, the subject can be revisited.

Staff looks forward to discussing these issues with the Council on January 13.

Respectfully submitted,

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City Manager