

23

From: **Sam Seidel** <seidel.sam@gmail.com>
Date: Sun, Jun 29, 2014 at 6:03 PM
Subject: Special Permit Granting Authority should remain at the Planning Board
To: Council@cambridgema.gov

Dear Councillors,

As you prepare to discuss transferring the special permit granting authority from the Planning Board to the City Council, I would like to express my opposition to that idea, and share my thoughts about it.

They can be found on my blog. In addition, I have pasted them down below. Please excuse the length. I know you are all busy.

<http://blog.samseidel.org/2014/06/death-by-thousand-curb-cuts.html>

Sincerely,

Sam Seidel
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Death by a thousand curb cuts.

At tomorrow's Cambridge City Council meeting, councilors will consider a proposed rules change transferring special permit granting authority from the Cambridge Planning Board, where it currently resides, to the City Council. Special permits, a zoning tool allowing uses and activities beyond what is allowed "by right" under certain conditions, require approval by the local special permit granting authority.

In my view, moving the authority ("SPGA") from the Planning Board to the City Council is a terrible idea and, if adopted, will create untold problems for the Council, where only one member of the current nine can claim any expertise in urban design, planning or architecture.

More importantly, the citizens of Cambridge will not see an improved process or better outcomes. Instead, they will see a further contorting of our public debate because now all development will become overtly political. Furthermore, the relationship between councilors and developers will grow toxically close, undermining the principle of healthy arms-length deliberation by the decision-making body. What follows began as an list serve exchange and expresses my views on the matter in greater detail.

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I do not believe having the City Council doing specific project review is a good idea. As an urban planner who served on that body for four years, it was never my experience that the Council was prepared to do the detailed work of project review. My opinion has not changed since. It's not what a City Council is made for, and it's not what it should be doing with its valuable time.

There are plenty of instances showing just what a tough time the Council has in making timely decisions in contentious development debates.

Consider curb cuts. These petitions over access to the public way come to the Council periodically after a thorough review by city staff. Sometimes they are non-controversial, but often they cause a firestorm of opposition requiring huge amounts of discussion and negotiation. The curb cut on Avon Hill split the neighborhood and demanded months of work to sort through. A curb cut, by anybody's reckoning, is microscopic compared to the complexity of design arguments on a 20 story building where thousands of different design criteria come into play.

The Foundry Building is another example. In 2009, the city was given this structure — a building of about 60,000 sq. feet — as part of a mitigation agreement with Alexandria Real Estate for its Binney Street developments. As of this month, June 2014 — five years later — the City Council still has not been able to decide what should happen with that building. This does not auger success (or sane governance) if the Council's responsibilities expand in a significant manner.

To me, the Foundry Building process is typical of what happens when political bodies try to get their hands around a very specific decision. Individual councilors focus on their individual concerns, and can grow intransigent. This locks up the process and freezes any motion. To unfreeze the situation, pols negotiate with each other until a sufficient number of votes are reached. That is not urban design. Nor would it be project review. It is horse-trading, plain and simple.

Furthermore, the political pressures will force us to design by committee. Given the amount of trouble we already have reaching agreement about buildings under our existing process, I cannot imagine how this is an improvement. Blandness will prevail in our design choices. Everyone from developers to community voices will opt for "safe" because it will be the easiest. Offending the least number of people is not a mark of leadership. Not in environmentalism. Not in urban design. It just seems like architectural retrenchment to me — and expresses fundamentally conservative tastes rather than progressive and challenging ones. This is not a version of project review I want to see.

The scope of work involved in project review is large. I count nine projects "Special Permit - Granted" in 2014, totaling altogether 1.9 million square feet. I wonder — on what basis will unelected aides and their councilors be making decisions about what passes muster? What happens in the case when only three community members show up to the meeting? Do they become the group to decide? And what happens when nobody shows up to voice an opinion? Is it just the whim of the councilor — say one trained as a peace activist, or in non-profit management, or in law — to decide what that building should look like? This is not an improvement over our current system.

Now, consider the impact this will have on the relationship between city councilors who will hold final say over projects and developers who stand to reap huge benefits for projects that move forward. Developers will be petitioning councilors constantly, seeking their blessing on minute aspects of design and aesthetics. Over time, this will bind these two parties together at the hip more closely. The logical conclusion of this relationship is not a healthy picture at all. Added to this, it is simply true that councilors have busy schedules and focus on their own issues — whether those are early childhood development or greenhouse gas emissions reductions. Often this means they defer to committee chairs on subject matters not their own. In practice, this is not a bad thing — it is how committees are supposed to work — but it means that all of this design decision-making authority will be run through one committee chairperson (or possibly two, if there are co-chairs). That is simply worse than the system we have now, whatever its flaws.

The special permit granting authority also creates a new (and onerous) timetable for the City Council, one which I believe it will have a hard time meeting. Under Massachusetts General Laws, Chapter 40A Section 9, the SPGA is required to hold its initial hearing within 65 days of an application having been filed. The decision has to be handed down within 90 days of that initial hearing, unless the timeline is

extended by agreement of both parties. This will be in addition to the timeline the Council must meet for all zoning petitions, and if the Council fails to act in the 90 days, this provision kicks in:

Failure by the special permit granting authority to take final action within said ninety days or extended time, if applicable, shall be deemed to be a grant of the special permit. (MGL, Ch.40A, sec.9)

As well, it is worth noting that the appeals provisions in MGL Ch 40A section 17 are broadly inclusive:

Any person aggrieved by a decision of the board of appeals or any special permit granting authority ... whether or not previously a party to the proceeding ... may appeal to the land court department, the superior court department in which the land concerned is situated ...

Furthermore ...

If the complaint is filed by someone other than the original applicant, appellant or petitioner, such original applicant, appellant, or petitioner and all members of the board of appeals or special permit granting authority shall be named as parties defendant with their addresses.

It is fair and reasonable to ask if the Council will effectively be able to meet the mandated timelines without creating a situation of endless extensions producing something very close to a work-stoppage on all development. Furthermore, my reading of the appeals provision states that anyone can file an appeal, and that all city councilors would be named as defendants. This could quickly become an unworkable situation in a city where all development proposals are highly politicized and contentious.

Planning boards were established exactly to create separation between elected bodies and more technical decisions that need to be made about buildings. Accountability is a good thing, of course — we want the ability to throw the SOB's out of office at the next election — but it is axiom that politicians often can't see further down the road anyway. Someone needs to keep an eye on the long-range needs and demands of this community. In a place where small numbers of active voters can skew any discussion significantly and developers pursue their own agenda, this proposal won't solve any of it. In fact, it will only make it a lot worse.