

From: Carol O'Hare [mailto:cbo1066@gmail.com]

Sent: Monday, June 15, 2015 3:04 PM

To: City Council; Rossi, Rich; Farooq, Iram

Cc: Lopez, Donna; Paden, Liza; Dash, Stuart

Subject: P.S./Correction: Volpe Development - Policy Order #4, 6/15/15 - A picture is worth 1,000 words. So is a 3-D electronic model.

Importance: High

Correction, courtesy of eagle-eyed & quick-witted John Hawkinson:

Of course, the "deliberative process" exemption is a Public Records Law concept, not an Open Meeting Law concept.

Ms. Lopez, Please include this in the Official Record.

Ms. Paden, Please forward this to the Planning Board.

CO'H

From: Carol O'Hare [mailto:cbo1066@gmail.com]

Sent: Monday, June 15, 2015 2:34 PM

To: Cambridge City Council; Richard Rossi; 'Farooq, Iram'

Cc: Donna Lopez; 'Paden, Liza'; Stuart Dash

Subject: Volpe Development - Policy Order #4, 6/15/15 - A picture is worth 1,000 words. So is a 3-D electronic model.

Ladies and Gentlemen:

A. Why Withhold Volpe Development 3-D Electronic Models from the Public?

1. Background

- CDD has developed 3-D electronic models (Models) of some hypothetical developments that could be built at the Volpe site under their draft PUD-KS zoning amendment.
- The City Law Department has opined that the Models (though available to city personnel, the City Councillors and presumably the Planning Board members) may legally be withheld from the public under the "deliberative process" exemption to the public records law, which allows the government to avoid releasing materials that could taint the process of policy development."^[1]

^[1] Excerpt from Cambridge Day, 6/4/15, "In council zoning for redeveloping Volpe, sky-high 'Cheung Tower' put on the table," by John Hawkinson:

Yes, no, yes again on 3-D model ... maybe.

In preparation for the April board presentation, city planning staff produced a series of three-dimensional electronic models of hypothetical scenarios for Volpe development. After agreeing to release them to the public, city lawyers changed their mind and said that because the Volpe zoning had not been finalized, they could withhold the electronic models under the "deliberative process" exemption to the public records law, which allows the government to avoid releasing materials that could taint the process of policy development.

As recently as Friday, city lawyers claimed they could withhold the 3-D models until the council takes final action on the zoning.

But at Monday's meeting, Carlone and vice mayor Dennis Benzan asked Farooq if a model could be made available, saying it would be "very helpful."

Farooq agreed, saying "we have a few different models that we are happy to share."

2. PR and Common Sense

Just from a PR and common sense perspective, that seems both counterproductive and counterintuitive. If all those city elected and appointed officials and personnel (including CDD personnel who wrote the zoning amendment need models, in addition to words, to help them imagine and understand what the proposed zoning amendment would/could/might permit, why should the public be denied those models? Why should we have to rely solely on words, often conveying complex and technical zoning concepts like FAR, cross-references to other provisions of law, etc.?

3. Deliberative Process Exemption^[2]

I'm definitely no expert on the Open Meeting Law or its exemptions. But, it seems to me that the Law Department's position that the City Council and Planning Board may benefit from viewing the Models, but the public may not, undercuts the very purpose of the Open Meeting Law and for no good reason.

It's difficult to understand how viewing some potential options would "taint the development process." Especially because there is no private developer to present an actual project that requires this zoning amendment, the City should (instead of hiding the models) make extra robust efforts to Show and Tell the public what this proposed rezoning could permit to be constructed on the 10-acre Volpe site. That seems to have been Iram Farooq's sense, too, until the Law Dept. rendered its opinion.

4. City Waiver?

Even if the Law Dept.'s view would be legally defensible in court, may the City not waive its claimed right to withhold the Models? Are our City officials the required to take refuge in the "deliberative process" exemption? If held public office, I think I'd be embarrassed to do so in a case like this.

B. Lessons from Normandy/Twining Tower: their Rendering & 3-D Model

1. Normandy/Twining's Pretty-as-a-Picture Rendering, copy attached.

Normandy/Twining's widely circulated bird's-eye view rendering shows how their project would look from many stories above street level. Here's what two architect friends observed about the N/T rendering. (I did not coach them.)

a. Ray Warburton, retired Design Partner at Shepley Bulfinch, wrote:

"The purpose of the proposed rendering is to "sell" the project... This aerial perspective does not show how it would be perceived by residents, pedestrians or motorists. The most illustrative vantage point from which to draw this perspective would from the "entrance" to Lafayette Park from MIT – the corner opposite the intersection of Sidney Street and Mass Ave – looking down Mass Ave towards Central Square. Lafayette Park would be in the foreground and the fire station on the left hand side. This would better show the scale difference between the 19 floor tower and the four and five story buildings currently flanking both sides of Mass Avenue and would better facilitate a discussion about the benefits, drawbacks and appropriateness of changing existing zoning to allow such a design to proceed."

After the meeting, though, Farooq said she would be sharing the model with the council but not be making it publicly available.

[2] "A **deliberative process exemption** to open records requests is one that shields from public scrutiny that papers and materials that elected officials use in the course of reaching a decision. There are two clear arguments for this exemption. The first argument for the exemption centers on the notion that public officials should be able to conceal much of the thought process behind making a decision in order to protect the free flow of opinions and information. The courts and legislatures have traditionally argued that without the exemption in place, the ability of public officials to receive opinions from their constituents would be hampered. In addition, the exemption is in place to protect the internal thought processes and notes of public officials from public scrutiny, as predecisional material is typically considered work product and is thus exempt. Various states approach this exemption differently, with some enforcing a broad definition while others reject it outright." http://ballotpedia.org/Deliberative_process_exemption-Massachusetts

b. Robert Kroin, 40 years' experience in urban design and project review; teaching at Harvard, MIT, and Harvard Institute of Learning in Retirement; AIA's Thomas Jefferson Award, the profession's highest acknowledgement of design work in the public sector, wrote in relevant part:

"The site is significant because it marks the location of the easterly entrance to Central Square (and the westerly entrance to MIT), because the street intersection has memorable place-making geometry, and because the site is important in orienting the visitor to the street plan of Cambridge -- the East Cambridge and Cambridgeport street grids merge at the site -- and to the physical relationship between Cambridge and Boston: both of the streets lead to bridges between the two cities...."

[The Normandy/Twining rendering] does not illustrate the project from street-level as it would be seen and experienced by the community...."

I don't understand why neither CDD nor the Planning Board insisted that the deep-pocketed N/T developer illustrate show all of us renderings their proposed project from specified locations and at specified angles.

2. Normandy/Twining 3-D Model

Normandy/Twining first publically showed their 3-D tower-project and surrounding-area architectural model at an Open House last fall, I think. The residential tower part of the model was lopped off at mid-height, stories short of their proposal. After public objection, N/T altered their model to show the actual proposed stories/height in relationship to surrounding buildings. That should have been a no-brainer from the start.

And, I'd guess that N/T representatives first showed their lopped-off model to CDD before presenting it to the public. And, if so, why didn't CDD insist on a complete model, including all stories and the mechanical penthouse?

Bottom Line: If pictures (and models) are worth 1,000 words, why not let us see them, too?

Thank your for your time and consideration.

Carol O'Hare
172 Magazine St.

P.S. Donna Lopez, City Clerk: Please file this with the Official Record.
Liza Paden: Please forward this to the Planning Board.