Citizen comment on the draft revised Somerville Zoning Ordinance
Version published on 23 January 2015

Honorable members of the Somerville City Council and the Planning Board:

Thank you for the opportunity to comment on the draft revised Somerville Zoning Ordinance. As a retired urban planner and land use lawyer, I have read the text with interest. I think that the draft is a useful first step and, in many aspects, has successfully transformed the city's comprehensive plan – Somer Vision – into practical regulatory tools. In particular, by revising the rules and standards that apply to the low density residence zones and squares and by applying a "contextual" approach, this new ordinance should prove effective in improving housing quality and preserving the character of Somerville neighborhoods. George Proakis and his talented staff should be commended for their hard work and creativity in preparing this draft.

In the following analysis, I focus on the non-residential and mixed-use zones and on the procedures for the approval of development in these zones. I think that it is necessary to make a clear distinction between the low-density residential zones and squares and the city's former industrial zones, which are now anticipated as transit-oriented and "transition" zones. This distinction is found in the city's Somer Vision plan and, I believe it creates the need for two separate approaches in defining the districts and rules in the zoning ordinance.

On the one hand, in the residential zones and squares, the main problems of future development will involve preservation and "infill" of houses, storefronts and service activities. Consistent with the city's planning, the draft zoning uses a "contextual" approach in defining permitted uses and the placement and scale of new buildings and alterations. In essence, the rules and standards for each new project will be determined by analysis of its surrounding uses, and by measurements of the size, scale and spatial relationships of existing buildings. These will reveal the "context" into which the new project will fit. In most of Somerville's residential neighborhoods and squares, there is a clear "context" because the houses and storefronts were generally built in the same time frame, with similar architectural features, building types, and patterns of lot subdivision. Thus, the contextual approach should prove effective in achieving incremental development and alterations that maintaining established character and quality.

On the other hand, in the non-residential districts, the primary problem of future development will be how to accommodate needs, which cannot be fully understood today, in zones, where there is and will be no "context." The lack of context is due to the history of these zones, which have changed by parcel re-arrangements and replacement of buildings over the years. Further, since the policy for these zones is "transition," any existing context is irrelevant. Thus, trying to determine the rules and standards by the same methods of contextual analysis and measurements will not work. An alternative method of regulating uses, buildings and spatial relationships in the non-residential and mixed-use zones is required.

Unfortunately, the drafters of this zoning ordinance have not found an appropriate and effective approach for the non-residential, mixed-use and "transition" zones. Instead, they have created a very complex and convoluted system of regulation that requires the creation of an imaginary "context" for every block and project and then requires application of the same

findings of "compatibility" or "consistency" that are used in the preservation zones. This creates an enormously complicated method of decision-making and one that does not fulfill the presumed goal of allowing landholders, developers, investors and citizens to easily predict outcomes. The approach is likely to confuse and frustrate both the process and the substance of future applications and it poses strong risks of ad hoc decision making and irregularities.

Overview

The draft zoning ordinance proposes to set aside several of the traditional mechanisms of zoning, including the strict separation of uses by zones; the regulation of size, scale and placement of buildings by calculation of a "building envelope" on each parcel; and the inclusion in the text of fixed standards or calculations of bulk, density and Floor Area Ratio. In their place it offers the "contextual" and design-oriented approach. We have been told by the planners that this will provide flexibility for landholders and builders, predictability of outcomes, and stronger protection of neighborhoods. The new approach can be recognized in six major features of the draft when compared with the 1990 Somerville Zoning Ordinance:

(1) A change in vocabulary that favors planning terminology, rather than the traditional legal and "regulatory" phrasing;
(2) A structure of zones in three categories – low density residential; squares and corridors; non-residential and "transition" zones – with seven Special Districts;
(3) A system of classification of uses by spatial and functional character and other aspects of identity, rather than by performance and nuisance factors;
(4) A system of classification of building types, rather than building "envelopes;"
(5) Multiple requirements of conditional uses, public benefits and "amenities;" and
(6) A more complex procedure of multiple reviews for all projects other than low-scale residential construction and minor alterations.

Each of these features raises questions and potential problems, which are discussed in the following sections of this report.

Item 1: Planning text

The draft text abandons the traditional practice of writing the ordinance as a regulatory rule-book with one introductory section that references phrases, drawn from the state legislation and primary court cases. (Section 1.2 of the 1990 Zoning Ordinance) Traditionally, this introductory language has functioned as "legislative history," intended to support the rules and standards against legal challenge.

The new text provides multiple statements of "Purpose," beginning with an elaborate section for the ordinance as a whole (Article 1:2). The for each Base District zone (11 zones) and every Special District (7 zones) it has introductory paragraphs of "Intent" and "Purposes" (Article 2 and Article 4). It has more Purpose paragraphs for the Building Design chapter (Article 3.G); for each of the Accessory Uses and Structures (4 items in Article 6); for the Parking and Bicycle rules (3 items in Article 7); for the Public Realm Standards (Article 8) and for the Community Benefits (3 items in Article 9). In total, therefore, there are 49 statements of

purpose and intent , containing hundreds of lines of text, much of which is repetitive and almost all of which is written in planning jargon. What is this all for?

Following the "contextual" approach, these "purposes" sections are expected to clarify the planning goals and considerations, which will guide project designers, the building officers, and the boards and commissions – making up for the absence of fixed standards. For example, if there is no longer a maximum FAR fixed in the zoning rules, how is anyone to know what building sizes and amounts of use can be permitted on a parcel? Theoretically, each project will be subject to a technical review in which there will be a reference back to these purposes statements and to other planning documentation to discover the existing "context," or to create the "vision" of a future context, against which the new plans can be compared. The decisions about permitted uses, bulk, placement, limitations and conditions will then be based on findings of "compatibility." (See discussion of Article 10, review procedures, below)

I am not convinced that these Purposes sections will serve effectively over time. Planning jargon changes quickly, following the latest fads of theory and the fashions of architecture and real estate marketing. For example, the following "purposes" phrases appear in Article 1 section 2:

> … to develop and maintain complete, mixed-use, walkable, transit-oriented neighborhoods;
> To provide distinct physical habitats at different scales … so that meaningful choices in living arrangements can be provided…
> To require a strong connection and gradual transition between the public realm (sidewalks, thoroughfares and civic spaces) and private realm (yards and building interiors)…
> To preserve and expand the city's walkable network of human scaled thoroughfares…

What is a "complete, mixed-use, walkable and transit-oriented" neighborhood? What is a "strong connection and gradual transition" between public and private "realms?" Are these concepts meaningful at the low- and moderate densities that the zoning will allow? Do they mean something in relation to the economic activities that Somerville expects to attract as part of the Boston region today or tomorrow? How will the building officer and Planning Board determine that a new apartment building or incubator space does or does not achieve these purposes? Will it encourage the developer to add more units and height to maximize the number of pedestrians and subway riders to achieve transit-orientation? Or will it require the developer to lower the number of units and building height in order to achieve "walkability" by lowering the impact of shadows on the sidewalk, lessening the number of pedestrians, uber-cars and grocery delivery vans arriving at the building?

The planning jargon is not only unclear but it creates a false impression of the scope and potential of the zoning process. As a system that regulates building forms, sizes and functions, zoning cannot guarantee, or deliver effectively, such planning goals as "walkability" and "complete" neighborhoods. Use of such language distorts the expectation of outcomes and often leaves the public frustrated and disillusioned when the reality of finished development is simply routine.

Item 2: The structure of zones and the contextual approach

By defining the zones of the city in three broad categories, this draft Ordinance follows the city's comprehensive Somer Vision plan. It provides for:

- Lower density residential zones with a primary goal of preservation of existing character and functions;
- Squares and commercial corridors for commercial infill and incremental new housing; and
- Zones of "transition," where lower density, industrial and warehouse/transport activities may be replaced by higher density, mixed-use developments.

Somer Vision, however, has created this structure in order to reconcile the fundamental problem posed by the application of its primary policies to the small geographic area of the city. That is, how can we meet the future need for 6,000 or 9,000 housing units and workspace for 30,000 jobs in a city of 4.5 square miles and still preserve low-density neighborhoods that occupy over 80% of the territory? The zone structure is thus justified by the macro-level analysis.

When the drafters of this Ordinance set about transforming the broad zone structure into specifically defined zones, they used a different – micro-level -- methodology of analysis, consisting of two activities: First, they studied the blocks and parcels in each zone in detail, noting architectural details and taking spatial measurements to create the "context." Then they brought together citizens for multiple sessions of consultation and "visioning" to clarify the rules and standards.

As noted above, this methodology has worked well in the residential districts and squares for two reasons: the studies of architecture and spatial relationships yielded clear and coherent context for most blocks, and the long-time residents and shop-keepers in these zones had a good understanding of how the uses, buildings and spaces around them function. The public discussions were able to focus on practical problems and solutions.

By contrast, for the non-residential zones, the contextual analysis and "visioning" have worked badly for three reasons: First, the zones lack coherent "character" and, second, the policy of "transition" makes analysis of existing buildings and spatial relationships irrelevant. Further, there are few residents and shop-keepers in these zones and information that would come from people observing their neighborhood has been missing. The planners have had to create a substitute, future "context" by exercises in which citizens to move little Monopoly game houses around on maps and pick out their favorite glossy pictures of facades in Seattle, Portland and Soho. Then the planners have turned to the latest trade publications for terms and phrases such as "makers," "fabrication," and "creative economy" to describe the uncertain future.

This method of creating an artificial "context" is a weak and unsatisfactory basis for the definition of the new mixed-use, transition and transit-oriented zones. This is evident in the "design-orientation" of the zone descriptions and, especially, in the illustrative drawings that are

included in the text. For example, in the "Fabrication" zone we see little pictures of a historic New England mill as the typical building form (page 70). For the 10-story Mixed District (page 21) and the Assembly Square District (page 93) we see Washington-DC style blocks. For the Brickbottom and Inner Belt special districts no pictures are included, perhaps an honest admission by the planners that they have no idea what future buildings will hold the mix of "makers," transit-riding residents and customers of jazz-clubs they foresee in the zones.

Traditional zoning handled the problem of un-predictable future development and market conditions by three mechanisms: (i) placing industry and high density commercial activity in zones, separate from residential blocks; (ii) defining development potential by a spatial "envelope" of maximum height, widths, depth and required open spaces on a parcel, allowing architects to make any choices that fit within the lines; and (iii) providing performance standards, which allow landholders and users to change from any permitted use to any other, so long as the limits of traffic, pollution, etc. are not violated.

Having rejected these traditional mechanisms, the drafters of this zoning Ordinance have confronted the problems of potential nuisances and incompatibilities by including a complicated set of mechanisms, as follow:

- Provision of six different Special Districts in addition to the five mixed use and two – fabrication and commercial industry – districts;
- Division of the variety of commercial and industrial uses allowed in these zones into multiple sub-categories based on size (under and over 5,000 or 10,000 square feet); on ideas about the building types they need; on aspects of functional performance; and on factors of abstract "character" or identity;
- Definition of the permitted uses in each zone by sub-category – for example, allowing retail and service uses of very small floor area in mixed-use zones;
- Requiring site plan or design plan reviews of almost every non-residential use, presumably to "tailor" the spatial layout, architectural features and functions of each project to the specific context;
- Requiring almost all non-residential uses over minimal size to undergo special permit review;
- Requiring larger scale projects to provide mandatory conditions or discretionary "amenities;"
- Adding in the regulations various non-mandatory architectural and site design elements that are expected to provide "guidance" in the processes of review of projects.

This does not seem to offer the simplicity or predictability of outcomes, which the planners have told us have been their goals.

One fundamental problem is that the city's planners have not substantiated the proposed rules and standards for non-residential uses by any up-to-date study of the city's industrial, warehousing and transport activities; by any accurate analysis of the city's labor force; or by any predictions of the changes likely in the economic sectors of the Boston region. The Somer Vision economic study annex was published in 2009 based on data and analyses from before the economic recession of 2008. In the public meetings, the planners have acknowledged that many

aspects of work organization, the structure of enterprises, and the balance between employees and contractors are changing. These changes have important implications for spatial calculations (such as square foot per employee), for building designs and functions, and for the expected movement of workers to and from job-sites. But the discussion has never gone any further and no solid research has taken place – instead, the city's planners have simply adopted new jargon categories of "makers" and the "creative class," and have assumed that Somerville's "transition" zones will attract spill-over from Kendall Square because of simple geographic proximity.

Item 3: Classification and sub-classification of uses

Traditional zoning classified uses into only three categories – residential, commercial and industrial – but over the years, as technologies, products, services, and "lifestyles" evolved, the list of uses became more elaborate. As a result, the 1990 Somerville Zoning Ordinance contains 17 categories and mentions well over 200 specific uses. The new text appropriately reduces this to just over 100 uses, arranged in 11 categories. It further attempts to avoid the proliferation of more uses in the future by providing explanatory definitions of each category and sub-category of uses Presumably, these explanations will allow the building enforcement officers to properly categorize new uses, when proposed, and they will guide the reviewing bodies (as well as applicants, designers and developers) to conform uses to the appropriate standards and design requirements.

For the most part, the use categories appear logical and they group together activities that are likely to have similar functions and impacts. However, in two places in the text, the sub-categories appear arbitrary and outside the competence of zoning.

First, there is a division of retail activity between "formula" retail and other retail that seems intended to reserve space for local entrepreneurs or small scale operations, excluding national "chain" stores. Similarly, there is a distinction made between "co-working" offices and other types of offices. It is unclear how to tell these apart (since spatially it is a matter of placement of interior partitions. It is further unclear whether these regulatory controls are intended to create a different "character" of activity along the streets, or to protect local businesses from the nasty forces of standardization and corporate capital. I know of no substantiating studies in the planning or economic development literature that would support this kind of market regulation, masquerading as "use" distinctions.

Another unsubstantiated sub-division of uses is the category of "arts and creative uses," which include a number of activities of fabrication with metal, wood and other substances, and various activities of sale and exhibition. In terms of functional or nuisance factors, there appears to be no justification to separate these activities from other small-scale manufacturing and retail operations. The sounds made by someone, banging on metal to create a statue are indistinguishable from the sounds made by someone fixing a carburetor. The movement of customers to and from a gallery or architect office is no different than customers going in and out of a drugstore or an accountant office.

These categorizations, which are based on the identity or status of people not functions and performance, are elitist and faddish. They are inappropriate in a zoning ordinance.

Item 4: Regulation by building types

In applying the approach of regulation by context and design, this draft Ordinance uses the regulatory mechanism of permitted "building types" with mandatory and recommended architectural elements. Again, this seems to work well for the residential districts and squares and it works badly for the non-residential and "transition" zones.

The problem can be seen most clearly in the "Fabrication" district – which is not a compact or cohesive zone, but is a series of parcels, some of which are clustered in Ward 2 and others, which are little spot zones scattered around the city. All the "Fabrication" parcels now have old fashioned manufacturing or warehouse/garage buildings – which are called "production buildings" or "fabrication lofts." These are not buildings that anyone would build today, so essentially the Fabrication designation is a preservation regulation. If an existing building were to burn down or become economically unviable, the zone designation would have to be removed to re-develop something on the site. Thus there is no predictability and the "fabrication district" regulations are of little use as guides to development.

The same problems are likely to be encountered with other "building types" that are undergoing change as a result of new technologies and structures of work organization. For example, if the current fad of "incubator" spaces proves successful, then many of the entrepreneurial start-ups will be looking to expand to mid-level operations, which imply condominium-style facilities or spaces that can easily expand and contract. In the past, this space has been provided in converted old lofts or single-story sheds. If there is hope of keeping these types of operations in Somerville at "transit-oriented" densities, then a new style of multi-story, but still flexible working space will be needed. Looking at the draft text, it is difficult to see how the zoning might work to accommodate or encourage this potential scenario. Use of the jargon word – "makers" and "fabrication lofts" – simply is not enough.

Item 5: Conditional uses, benefits and "amenities"

Since the 1970's, municipalities around the US have added to their zoning ordinances more and more provisions in which the approval of projects is made conditional on the property owners and developers agreeing to provide community benefits or "amenities." These can be standard requirements for all developments of a certain size or type (inclusionary housing) or they can be project-specific conditions, which are negotiated in the technical, public review and approval processes.

Initially, the practice of conditional zoning was upheld by the courts, based on the idea that the zoning ordinance would function in many places as a "subdivision" ordinance – that is, it would permit larger scale or multi-parcel developments, which would require an orderly layout of streets or public spaces and infrastructure lines. In particular, in cities like Somerville, which were already built up, the absence of suburban style subdivision regulations has justified these rules. Another point of origin for site-specific conditions was the practice, begun in New York in the 1980's, of granting "bonus" floor area or special adjustments of use, bulk or building placement requirements in exchange for some "amenity" in the project.

Once established, the trend in most municipalities has been to continue expanding the applicability of these regulations to more and smaller projects. Every neighborhood wants to benefit from developer-bought improvements and now, in planning practice, conditions and amenities are thought of as a social impact fee or social rent. As a legal matter, the US Supreme Court rejected this concept in its ruling in the Grand Central air rights case, but it has nevertheless come to dominate the thinking of US urban planners. The idea is very strong in the planning theory of contemporary Russia, Brazil and other post-Soviet and Latin American states.

The problem with conditional zoning is not the policy – municipal governments and constituencies can choose their priorities and determine whether developer subsidies are an efficient way to gain affordable housing, park space, artist workspace, or street trees. Essentially, the real property market works the costs into project finance. If the market is weak, developers will avoid the zones and municipalities with high-cost amenity requirements.

The potential problems lie (i) in the process of review and approval and (ii) in the clarification of post-project responsibilities for management and control. During public review and approval, the negotiations over conditions and amenities often dominate the discussions at the expense of consideration of the land use, spatial issues and impacts, which are supposed to be the basis of regulatory decision-making. The process can easily become one in which rival groups jostle to insure that their favorite agendas or subsidies are provided. Favoritism and off-the-record deal-making are always risks.

After projects with community "amenities" are built, the problems of who must maintain the amenity, pay for its up-keep and monitor its use are often poorly defined. The street trees die and no one has a budget to replace them; multiple athletic groups squabble over who has priority to use the developer-provided open space, while the surrounding residents do not want the noise of cheering fans. Amenities that looked great on paper, turn out in reality to be awkward or ugly space that everyone avoids the conditions for use of the space cannot be fulfilled by the NGO that was awarded the occupancy right.

Unfortunately, the planning literature is dominated by the "success stories" of lively public parks, performance spaces and the cute, vest-pocket museums that have been tucked into office towers on the main avenues of Manhattan. The hundreds of dull and unworkable open spaces and the wasted or unspent monies in affordable housing funds around the country are generally ignored until there is an audit or a scandal. For example, see the Boston Redevelopment audit, 2013. Another scandal that comes to light, periodically, is the rewarding of control over developer-generated amenities or funds to favored groups or personalities, who then abuse their power or embezzle the money.

Of course, these risks can be minimized by strict rules of procedure and by clear assignment of accountability for the amenity programs to appropriate city agencies – parks department, housing committee, etc. However, since the amenities are usually small in scale and their management lies outside the routine mandate and procedures of the agencies, these programs are often neglected.

Item 6: Discretionary and public reviews

The final major problem of this draft text is found in Article 10, which consolidates the rules for administration and enforcement of the zoning regulations and the procedures for technical and public reviews.

In the past, zoning ordinances provided five instruments for application and adjustment of the rules and standards:

- by right approvals,
- small-scale and technical special permit approvals,
- larger scale and flexible special permit approvals,
- variances, and
- text and map amendments.

Over the years, municipalities have added more instruments, such as site plan review, urban design review, and planned unit development status. This has made administration more complex, and has added advisory commissions and more levels of technical and public review. At the same time, however, the combination of instruments has blurred the distinctions among instruments so that the planners and the public now expect all decision-making to encompass the same range of issues of impacts (traffic, environmental, etc.), planning goals (housing, transit-use, etc.), and to involve negotiation of conditions and amenities.

The 1990 Somerville Zoning Ordinance followed these trends and made provision for Special Permits with Site Plan Review, and Site Plan Approvals, in addition to the traditional five instruments, noted above. The new draft Ordinance goes further and names ten discretionary reviews along with by-right approvals.

- Development plan approval (C.5.a.i)
- Large scale development plan approval (C.6.a.i)
- Neighborhood development plan approval (C.7.a.i)
- Special permit (D.1.a.)
- Subdivision plan approval
- Urban design waiver
- Variance
- Plan revision petition
- Land Conveyance petition
- Text amendment or map amendment

In addition it requires two more procedures of:

- Preliminary design review (B.3)
- Site Development Plan review (C.5)

In order to make this complex system workable, the drafters have created a full chapter of procedural rules in Article 10. Broadly, the chapter appears to have three purposes. First, it

seeks to create a uniform, multi-stage process, which can allow the city staff to organize its work and the project applicants (developers, landholders, investors) and public to predict the timing and sequence of meetings, hearings, reviews and decision-making. Second, it expects all parties to adhere more to the time-periods and data submission requirements – thus leading to more efficiency as projects move forward. Third, it accommodates project-specific adjustments and negotiations, which presumably achieve the goals of contextual compatibility and "good" design.

By consolidating all the rules and procedures, however, the text of Article 10 reveals significant contradictions and risks. Two problems are most acute: (i) the broad discretion and open-ended findings of the review boards and commissions and (ii) the failure to clarify and focus the substance of public review.

Discretion and open-ended findings

As discussed above, the way that decision-making is supposed occur when applying this zoning to individual projects, is for the enforcement officers and boards and commissions, to review proposed plans and compare them against a "context" that is defined by the multiple statements of purpose and planning documentation. We can look at two examples to better comprehend what is supposed to happen. First, almost all non-residential projects will be subject to the process of "Design Review" prior to the submission of an application for zoning permit Article 10: B.3(a) (i) describes the purpose of this review, as follows:

> A design review provides an applicant with an opportunity to receive advice and recommendations from the professional design community to insure that development protects and enhances the public realm and human scale of the City.

Second, many larger non-residential projects will be subject to "Site Development Plan Approval," which is described in Article 10:C.5(a)(ii):

> … an opportunity to submit architectural, site, landscape and engineering plans so that compliance … can be determined prior to preparation of construction documents …"

Comparing these two statements of purpose it initially appears that these will be very different procedures, one providing "advice and recommendations" and the other, giving rise to a binding decision of "compliance." However, further paragraphs, describe for each instrument, the "review criteria" that the commission or board must apply to makes its decisions. For the Design Review, under Article 10: B.3(e), the Urban Design Commission is required to look at:

- Consistency with any design guidelines of this ordinance or other existing policy plans of the City…
- Considerations indicated elsewhere in the Ordinance for the specific type of design review required…

For the Site Plan Review under Article 10: C.5(e) the Planning Board or ZBA is required to:

… verify that the submitted plan conforms with the provisions of the ordinance and demonstrates consistency to the following:

- The adopted comprehensive master plan of the city … and existing policy plans…
- The purpose of this Ordinance in general;
- The purpose of the district in which the property is locate; and
- Considerations indicated elsewhere in this ordinance for the required approval.

The same process and same criteria of "compliance" and "consistency" are required for a Large Development Plan, a Neighborhood Development Plan, a Subdivision Plan, and a Special Permit.

For some of these reviews and approvals -- in particular the Special Permit -- the Planning Board or ZBA must go beyond these open-ended criteria and make additional findings, which are specific to the use. For example, on page 159, in reviewing a "large floor-plate commercial or retail sales uses" (over 10,000 square feet) the Planning Board or ZBA must find:

- Compatibility with the intensity of activity associated with the surrounding land uses;
- Capacity of the local thoroughfare network providing access to the site and the impact on bicycle, pedestrian and vehicular traffic and circulation patterns in the neighborhood.

Similarly, on page 165, in approving a "data center" the board must consider:

- Mitigation of any negative aesthetic impacts that might result from required security measures of restrictions on visibility of the building's interior;
- Ability for the use to adequately contribute toward SomerVision's objectives for increasing employment opportunities in the city.

How will these reviews for "consistency" and "compatibility" with purposes and plans work in reality? What data and analysis will the will the boards and commissions require to answer the questions?

In essence, the process is expected to involve three or four steps of review, which will take place at public meetings and will be subject to public comment. First, the reviewing board or commission will make reference back to one or more of the "purposes" sections of the Zoning Ordinance itself to determine the "context" to which the proposed project is supposed to be compatible. Second, it must decide whether there are other plans for the zone or the type of use that are pertinent and make a second decision of consistency or compatibility. Third, if it determines that the proposal is not compatible or consistent, then it can either recommend or mandate changes in plans and conditions. It may or may not have the power to deny the approval if changes and conditions are unable to fix the identified problems, depending on its jurisdictional power.

The problem with this process has already been discussed above. With dozens of sections of purposes, written in planning jargon, and with multiple city plans that encompass hundreds of policy statements and agendas – this method of determining the rules for individual

projects – appears highly discretionary, un-predictable and open to all kinds of biases, irrelevancies and abuses.

Even under the somewhat specific findings that are required for a "data center" (cited above) what is the board required to look at? How will it determine the "aesthetic" quality of a data center – whether the racks of computer equipment are symmetrically arranged or whether the sign on the front door is in pleasing colors? How will it judge the necessary or appropriate level of jobs that the facility should be creating? Will it turn down an application by an enterprise that will make a heavy investment in computer equipment but will only have a small number of full-time jobs and sporadic visitors? Or will it turn down a project that proposes hundreds of dull jobs that keep require non-creative, low-wage clerks to sit all day and enter numbers into a computer screen? What expertise will board members bring to these questions and what insights will the public debate provide?

Failure to clarify and control public review

The complex, multi-stage procedure for review of all projects, not by-right, offers multiple points at which the application is made subject to public review and comment at meetings or hearings. This serves the important purpose of transparency and it, presumably, also has the intent of drawing from neighbors and other interested parties insights about how the project is likely to fit into and impact the surrounding neighborhood. Unfortunately, the language used to describe the public participation does not make its subject-matter clear and runs the risk of encouraging unfocused and noisy debate with outcomes that will frustrate the expectation of citizens.

The primary example of poorly-defined and unnecessary procedures is Article 10:B, which describes "Preliminary Review" as a process of recommended or mandatory Pre-submittal Meetings, mandatory Neighborhood Meetings, and mandatory but advisory Design Reviews. These meetings require the project applicant to make a presentation to the city planning staff, neighbors, the interested public, and peer-professionals when the project is still in the conceptual stage and can be easily adjusted to build in responses to community concerns. In theory, the meetings will expose all the issues, allow the parties to gauge and anticipate the substance, complexity, sequence and timing of the subsequent formal review procedure, and thus lead to a harmonious and efficient formal procedure.

Experience in other jurisdictions over the years, has tended to show that the opposite occurs because the parties, who engage in informal, preliminary meetings all have different expectations -- their inconclusive outcomes often lead to confusion and rancor later on.

A developer/applicant usually seeks a preliminary meeting with planning staff as a way to clarify how process will work and measure the sentiment of the staff to the project concept. The hoped for outcome is that the staff will support the project, endorse its main elements before the public and argue for its approval by the Planning Board or other reviewing body. In small cities like Somerville, most applications are filed on behalf of landholders and investors by professionals, who are experienced in local zoning practice. They are able to judge themselves

the extent to which they need guidance and interpretation beforehand and the extent to which they can generate public support and mitigate public opposition.

Community groups, neighbors and the public usually enter preliminary meetings with a skeptical and defensive posture. They hope to place on the agenda as many potential issues, objections, and expected conditions and amenities as possible so that, in the subsequent stages of review, they can negotiate effectively. At the early stage it is a strategic mistake for any community group or member of the public to express support for a project because then they will be left out of the subsequent negotiations as the project moves forward. It is always best to remain in the game with several points of opposition so that you stay at the table for the late rounds of trading.

These inconsistent positions create awkward roles for the planning staff and elected public officials, who will be pressed to side with one or another player, at a preliminary time when their legally-defined role is not yet be clear and when the technical reviews, which are supposed to inform their opinions, have not yet been done. Inappropriately, it is junior planners who most often eagerly seek a role at preliminary stages in order to feel they have a creative role in shaping the design of their city. This is highly improper because the legal role of city staff is regulatory – that is, to insure that developers and architects comply with the rules and standards. In exercising the zoning power, the planners are not co-designers or overseers of the developer's calculations of economic and market trends.

Somerville would do better to insure that its procedures of project review and zoning enforcement remain routine and professional. There should be nothing in the Zoning Ordinance that would either mandate or prohibit a developer or project designer from visiting the city planning office for a preliminary conversation to clarify issues of process, scheduling and project document requirements. If the planning staff has time and thinks that a meeting will be helpful, they should be free to organize it. Their minutes or notes would then be subject to open records, but there would be no expectation on either side that binding judgments or directives have been given.

Similarly, any developer is free to shop around his/her conceptual plans to gauge public and political reaction. This they should do on their own time. By saying nothing in the zoning ordinance about these meetings, it will be more clear that nothing, which is done or said at this stage, will be implied or misconstrued to bind the subsequent formal processes.

Conclusion

This draft Zoning Ordinance needs to be looked carefully to determine whether its proposed "contextual" approach is suitable for the future-oriented non-residential and "transition" zones; and whether its complex procedures and faddish planning jargon will leave the process open to biases, irrelevancies and abuse. The text should be simplified in four ways:

- Elimination of the pages of planning jargon that appear as "purposes" and Intent" sections in each chapter;

- Elimination of the “building type” approval mechanism for all non-residential and mixed use zones and return to the traditional mechanisms of FAR, and building “envelopes;”
- Removal of any “aesthetics” findings for project approvals in non-residential and mixed use zones;
- Elimination of the procedures for preliminary meetings for all applications; and
- Consolidation of the Brickbottom, Inner Belt, Boynton Yard and Grand Junction special districts into no more than two more generic “transition” zones.

This submission has been made by William Valletta, a resident at One Fitchburg Street. Bill has recently retired after a 40 year career as an urban planner and land use lawyer.